



**STAFF REPORT**

**To:** Members of the Design Review Board  
**From:** Planning Manager Watrous  
**Subject:** 150 Avenida Miraflores; Appeal of Planning Staff Approval of Tree Permit to Permit the Removal of one (1) Italian Stone Pine Tree and one (1) Cajeput tree, and Appeal of Planning Staff Denial of Tree Permit to Permit the After-the-Fact Planting of one (1) Italian Stone Pine Tree, one (1) Cajeput Tree, one (1) Cotoneaster Tree and one (1) Privet Tree; Edwin and Nancy Clock, Owners/Applicants/Appellants; Firuze Hariri, Applicant; File Nos. TREE2016001 & TREE2016017; Assessor’s Parcel Number: 039-111-09  
**Reviewed By:** \_\_\_\_\_

**PROJECT DATA**

**ADDRESS:** 150 AVENIDA MIRAFLORES  
**ASSESSOR’S PARCEL NOS.** 039-111-09  
**FILE NUMBERS:** TREE2016001 & TREE2016017  
**LOT SIZE:** 19,000 SQUARE FEET  
**ZONING:** RO-2 (SINGLE-FAMILY RESIDENTIAL-OPEN)  
**GENERAL PLAN:** M (MEDIUM DENSITY RESIDENTIAL)  
**OWNERS/APPLICANTS /APPELLANTS:** EDWIN AND NANCY CLOCK  
**APPLICANT:** FIRUZE HARIRI

**SUMMARY**

On April 20, 2016, Planning Division staff approved a tree permit (File No. TREE2016001) by the owner of the property at 163 Avenida Miraflores (Firuze Hariri, hereinafter referred to as “applicant”) to permit the removal of one (1) Italian Stone Pine tree and one (1) Cajeput tree on Town of Tiburon right-of-way adjacent to property located at 150 Avenida Miraflores (owned by Edwin and Nancy Clock, hereinafter referred to as “appellants”). On July 26, 2016, Planning Division staff denied a tree permit (File No. TREE2016017) filed by the appellants to permit the after-the-fact planting of one (1) Italian Stone Pine tree, one (1) Cajeput tree, one (1) Cotoneaster tree and one (1) Privet tree on the same property. The appellants filed timely appeals of both decisions. The appeals are attached as **Exhibits 1 & 2**.

## **BACKGROUND**

On February 3, 1983, the Board of Adjustments and Review approved an application for Site Plan and Architectural Review and a variance for reduced front setback (File No. 28216) to construct additions to the existing single-family dwelling located at 150 Avenida Miraflores. The Board's decision was appealed to the Town Council by a group of neighboring property owners, including the owners of 163 Avenida Miraflores (the applicant's parents).

On March 15, 1983, the applicants and appellants to that decision reached an agreement (**Exhibit 9**) to withdraw the appeal that included modifications to the project design approved by the BAR. The agreement included the following stipulation:

Subject to approval of a landscape plan by the Town of Tiburon (Condition No. 3 of Staff Recommendation approved by the Tiburon Board of Adjustments and Review on February 3, 1983), Mr. and Mrs. Clock will not install or maintain any additional landscaping which would further impair any marine views from the real property located at 163 and 165 Avenida Miraflores, Tiburon, California.

There is no approved landscape plan on file with the Town. However, Town files include a landscape plan dated April, 1983 that shows no vegetation to be planted in the Town right-of-way adjacent to the lot at 150 Avenida Miraflores.

Sometime after 1983, the appellants planted a series of shrubs and trees within the Town right-of-way. A recent survey submitted by the appellants as part of the application for Tree Permit No. TREE2016001 (**Exhibit B of Exhibit 4**) shows one (1) Italian Stone Pine tree, one (1) Cajeput tree, one (1) Cotoneaster tree, one (1) Privet tree and one (1) Eucalyptus tree within the Town right-of-way. The Cotoneaster, Privet and Eucalyptus trees are too small (less than a 60 inch circumference and less than 15 feet in height) to meet the definition of "heritage tree" in the Tiburon Tree Ordinance and the Eucalyptus tree is too small to meet the definition of "tree" in that ordinance.

As these trees have grown taller, the applicant has indicated that the trees have grown up into her views of Richardson Bay. The applicant followed the provisions of the Tiburon View Ordinance and requested that the appellants trim or remove these trees. The applicant filed a lawsuit against the appellants to resolve this matter. On September 1, 2016, the Marin Superior Court ruled in favor of the applicant and ordered that all five (5) trees be removed. The appellants have subsequently filed an appeal of this decision to the California Court of Appeals.

## **STAFF REVIEW OF TREE PERMITS**

On January 12, 2016, the applicant filed a Tree Permit application (File No. TREE2016001) to permit the removal of one (1) Italian Stone Pine tree and one (1) Cajeput tree on in the Town right-of-way adjacent to 150 Avenida Miraflores. After viewing the trees from the applicant's home at 163 Avenida Miraflores, staff determined that the trees intrude into the applicant's views and do not provide substantial privacy or visual screening or wind protection for the appellants' home. On April 20, 2016 staff approved the tree permit. The appellants subsequently filed an appeal of this decision.

On May 9, 2016, the appellants filed a Tree permit application (File No. TREE2016017) to permit the after-the-fact planting of one (1) Italian Stone Pine tree, one (1) Cajeput tree, one (1) Cotoneaster tree and one (1) Privet tree in the Town right-of-way adjacent to 150 Avenida Miraflores. On July 26, 2016, staff denied the application, based upon the potential for unreasonable or undesirable view blockage by the trees at maturity, as the trees currently extend into water views from the home at 163 Avenida Miraflores. The appellants subsequently filed an appeal of this decision.

On October 24, 2016, the attorney for the applicants sent photographs to Town staff (**Exhibit 16**) showing workers trimming the trees in question. The appellants did not obtain the required encroachment permit from the Tiburon Public Works Department prior to performing this work within the Town right-of-way.

### **BASIS FOR THE APPEALS**

There are five (5) grounds upon which the appeal of Tree Permit No. TREE2016001 is based:

Ground #1: **The subject trees do not meet the definition of “tree” under the Tiburon Tree Ordinance.**

*Staff Response:*

The Tiburon Tree Ordinance includes the following definition:

**“Tree”** means:

- (1) A woody perennial plant that has a trunk circumference of twenty inches measured at twenty-four inches above the ground surface; or
- (2) A woody perennial plant at least fifteen feet in height that usually, but not necessarily, has a single trunk.

In applying subsection (1) above, for trees with more than one trunk, the circumference measurement shall be ascertained from a single measurement around the outside perimeter of all trunks and shall not be calculated as the sum total of the circumferences of the individual trunks.

The survey submitted by the appellants (**Exhibit 12**) indicates that the Italian Stone Pine tree has a height of over 16 feet. Town staff measured the Cajeput tree around its multiple trunks and determined that its circumference was greater than 20 inches. The appellants’ arborist contends that the Cajeput tree is more than one tree and not a single, multi-trunk tree. However, the appellants’ survey indicates that this is one tree.

Ground #2: **There is a risk of soil instability of landslides if the trees are removed.**

*Staff Response:*

The subject trees are situated below a berm approximately 6 to 10 feet in height with mild slopes and partially covered with other vegetation. Staff believes that the risk of soil instability is low for this relatively small berm if the two modestly sized trees are removed.

Ground #3: **The subject trees were planted with the consent of the applicant's parents.**

*Staff Response:*

The appellants submitted a letter (**Exhibit 11**) from the appellants to the applicant's parents dated March 1, 1994. The letter summarizes some verbal discussions, but does not indicate actual consent for planting the trees. The letter also contains an assurance that the Italian Stone Pine tree "will not grow taller, from a horizontal point of view from your home's dining room or kitchen, than the permitted eight (8) foot height... of the existing *myoporum laetum*." This tree has now reached a height of over 15 feet.

Ground #4: **Town staff did not lend adequate deference to the special significance of protected trees under the Tiburon Tree Ordinance.**

*Staff Response:*

The Tiburon Tree Ordinance includes the following definition:

**"Protected Tree"** means any:

(1) Heritage Tree, meaning any tree which has a trunk with a circumference exceeding sixty inches, measured twenty-four inches above the ground level.

(2) Oak Tree, including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak or valley oak tree.

(3) Dedicated Tree, meaning a tree of special significance so designated by resolution of the Town Council.

The subject trees are not large enough to meet the definition of "protected tree."

Ground #5: **No further action should be taken regarding this permit until the lawsuit between the applicant and the appellants has been resolved.**

*Staff Response:*

As noted above, on September 1, 2016, the Marin Superior Court ruled in favor of the applicant and ordered that all five (5) trees be removed related to the lawsuit. The Town's decision on this tree permit is consistent with the court ruling.

There are seven (7) grounds upon which the appeal of Tree Permit No. TREE2016017 is based:

Ground #1: **The Tiburon View Ordinance exempts trees on Town property and requires that decisions should be made by the Public Works Department and not the Planning Division.**

*Staff Response:*

Section 15-16 of the Tiburon View Ordinance exempts trees on Town-owned property from the provisions of the View Ordinance. The decision on the subject tree permit was made in accordance with the requirements of the Tiburon Tree Ordinance, and not the View Ordinance.

Ground #2: **Consideration of views in making a decision on the permit conflicts with the requirements of the Tiburon View Ordinance.**

*Staff Response:*

The Tiburon Tree Ordinance specifically includes provisions that require consideration of “the potential for unreasonable or undesirable view blockage by the tree at maturity” in reviewing tree permit applications. This indicates that view considerations may be utilized in determining whether a tree permit should be issued.

Ground #3: **Other trees in the vicinity that also block views make any view impacts from the subject trees redundant.**

*Staff Response:*

A row of Eucalyptus trees planted along the properties along 5 and 7 Francisco Vista court are visible beyond the subject trees. The subject trees have grown to levels above these Eucalyptus trees. Therefore, the view impacts of the subject trees are not redundant.

Ground #4: **The subject trees do not meet the definition of “tree” under the Tiburon Tree Ordinance.**

*Staff Response:*

Please see the response to Ground #1 of the appeal to Tree Permit No. TREE2016001 above.

Ground #5: **Maintenance and retention of the trees would aid in creating shade, privacy protection, soil stability, noise buffering, wind protection, and erosion and landslide prevention.**

*Staff Response:*

Please see the response to Ground #2 of the appeal to Tree Permit No. TREE2016001 above. The trees relatively small and are located approximately 60 feet from the appellants’ home. Trees of this size and distance from the house provide minimal shade, privacy, wind or noise protection to the residence.

Ground #6: **The subject trees were planted prior to the requirements of the Tiburon to require a permit to plant trees within Town right-of-way.**

*Staff Response:*

The appeal states that the Tree Ordinance did not require a tree permit to plant trees in Town right-of-way prior to 2001. The Town of Tiburon has had several tree-related ordinances dating back to 1967. On December 3, 1991, the Tiburon Town Council adopted Ordinance No. 379 which established separate Tree and View Ordinances. This ordinance includes the following requirement:

**15A-3 When a Permit is Required.**

The planting, removal or alteration of the following trees is regulated by this chapter and shall require a permit:

(c) Town Property. Planting, removal or alteration of any tree on “Town property” is prohibited without the prior issuance of a permit, except that in cases of Town action on Town property, only the removal or alteration of a “protected tree” or the planting of an “undesirable tree” shall require a permit.

“Town Property” is defined as “any property owned in fee by the Town of Tiburon, or any easements, rights-of-way or other similar interests of the Town in property.”

As noted in the response to Ground #3 of the appeal to Tree Permit No. TREE2016001 above, the appellants submitted a letter from the appellants to the applicant’s parents dated March 1, 1994. The letter states that “we are advising you alone that we plan to plant a small, 5 gallon, Italian Stone Pine tree at the extreme West end of our property.” Therefore, the Italian Stone Pine tree was planted after the Tiburon Tree Ordinance required a tree permit to plant a tree in the Town right-of-way. There is no evidence to indicate that the other trees subject to this permit were planted prior to 1991.

**Ground #7: Utility easements on the subject property were never accepted by the Town.**

*Staff Response:*

The trees are planted within the Town street right-of-way for Francisco Vista Court, not within utility easements on the appellants’ property.

**CONCLUSION**

Staff believes that the tree permits were reviewed in compliance with the requirements of the Tiburon Tree Ordinance. The trees intrude into the views from the home at 163 Avenida Miraflores and do not serve substantial screening or other purposes for the appellants.

## **RECOMMENDATION**

It is recommended that the Design Review Board:

- 1) Hold a public hearing and take testimony on the appeal in accordance with the Town's adopted procedure (see attached **Exhibit 3**), and close the public hearing.
- 2) Deliberate and, if prepared to do so, indicate its intention to deny the appeals.
- 3) Direct Staff to return with resolutions denying the appeals for consideration at the next meeting.

## **EXHIBITS**

1. Appeal and supplemental materials for Tree Permit No. TREE2016001
2. Appeal and supplemental materials for Tree Permit No. TREE2016017
3. Town appeal procedures
4. Application form and supplemental materials for Tree Permit No. TREE2016001
5. Application form and supplemental materials for Tree Permit No. TREE2016017
6. Chapter 15A of the Tiburon Municipal Code (Tree Ordinance)
7. Approval of Tree Permit No. TREE2016001, dated April 20, 2016
8. Denial of Tree Permit No. TREE2016017, dated July 26, 2016
9. Agreement to withdraw appeal to Town Council, dated March 15, 1983
10. Letter from Tiburon Planning Division to Nancy Clock, dated June 17, 1983
11. Letter from Edwin and Nancy Clock to Mr. and Mrs. Hariri, dated March 1, 1994
12. Tree survey dated January 28, 2016
13. Letter from Edwin and Nancy Clock, dated March 1, 2016
14. Letter from Chester Judah, dated March 4, 2016
15. County Superior Court decision dated September 1, 2016
16. Photos of work performed at 150 Avenida Miraflores, dated October 24, 2016

Prepared By: Daniel M. Watrous, Planning Manager

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Prepared By: Daniel M. Watrous, Planning Manager



RECEIVED  
MAY 02 2016  
PLANNING DIVISION

TOWN OF TIBURON  
NOTICE OF APPEAL

Town of Tiburon  
1505 Tiburon Boulevard  
Tiburon, CA 94920 Phone 415-435-7373  
www.ci.tiburon.ca.us

**APPELLANT(S)**

(Attach additional pages if necessary)

Name: Edwin H. Clock & Nancy M. Clock

Mailing Address: 150 Avenida Mira Flores, Tiburon, CA 94920

Telephone: 415-435-8854 (Work) 415-435-8879 (Home)

FAX and/or e-mail (optional): \_\_\_\_\_

**ACTION BEING APPEALED**

Review Authority Whose Decision is Being Appealed: Watrous, Daniel

Date of Action or Decision Being Appealed: Postmarked USPS 4/22/16,

Name of Applicant: F. Hariri received 4/25/16.

Type of Application or Decision: Permits to Cut Down 22+40  
year old flora.

**GROUNDS FOR APPEAL**

(Attach additional pages if necessary)

See Attached Materials.

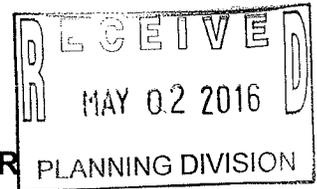
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STAFF USE ONLY BELOW THIS LINE

Last Day to File Appeal: 5/2/16 Date Appeal Filed: 5/2/16

Fee Paid: \$300 Receipt No. R1106 Date of Appeal Hearing: EXHIBIT NO. 1



**APPEAL OF TOWN OF TIBURON PLANNING MANAGER**

**WATROUS DECISION DATED APRIL 20, 2016**

Grounds for appeal by appellants Edwin H. Clock and Nancy M. Clock, residents at 150 Avenida Miraflores, Tiburon 94920 since 1980, consist of the following:

First, our Memorandum to Town of Tiburon Planning Department dated March 1, 2016, with several attachments, is hereby incorporated by reference, with a duplicate copy attached to this Appeal.

Second, see attached Arborist Report from Ray Moritz, Urban Forestry Associates, Inc. dated April 28, 2016. This report confirms, from a recognized expert, that the three (3) Maleleuca Quinquenervia, aka Cajeputs, are actually "three separate and distinct Melaleuca trunks..." and, further, that such species "does not propagate new or multiple trunks." Hence, the Town erred in its April 20<sup>th</sup>, 2016 finding of a single tree. In fact, as documented in appellants' March 1, 2016 Memorandum and the Tree Survey prepared by Licensed Land Surveyor and Civil Engineer Lawrence Doyle in January 2016, none of the three Melaleuca reach a height of fifteen (15); and two of the three Melaleuca have trunk circumferences 24 inches above the ground of less than 20 inches. Expert arborist Moritz, moreover, found that the three Maleleuca "were planted together to form a small grove-like cluster... Close spacing for this species is a standard landscaping practice." Hence, under Tiburon Municipal Code, Chapter 15A: Trees, Section 15A-2, these Melaleuca are not "trees" and should not be subject to applicant Hariri's demand for removal.

Third, at or before the time of a hearing before the Tiburon Design Review Board, one or more expert civil/soils/geotechnical engineers will provide expert opinion(s) and/or testimony regarding the risks of soil instability, landslides, and other potential risks from removal of the heritage tree, one Italian stone pine planted approximately 22 years ago. The removal of the Italian stone pine would entail removal of a massive root system which undergirds a more recently constructed retaining wall (constructed in 2005) running along the North side of Lower Francisco Vista Court. Removal of the root system, likewise, will be necessary in order for appellants to apply to the Town of Tiburon for the replanting of new flora.

Fourth, the planting in the mid-1990s of the Italian stone pine tree took place with the consent of applicant's parents, who were the sole residents of 163 Avenida Miraflores at the time (see attachment to March 1, 2016 Memorandum). In addition, we submit that Mr. Watrous' April 20<sup>th</sup> decision does not lend or apply adequate deference to "the special significance of "protected trees" such as the Italian stone pine nor to the "permit protection [for heritage trees] afforded by [Tiburon Municipal Code, Chapter 15A]."

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Fifth, in view of the unresolved litigation in pending Marin County superior court civil case no. 1402371, we request that no further action be taken by the Town of Tiburon in this matter until the above-referenced case is finally resolved, including the intended appeal of the case to the District Court of Appeals for the State of California exercising jurisdiction over case no. 1402371.

Finally, we reserve the right to make additional objections and to raise additional reasons in support of our position, up to the date of Design Review Board's hearing in this matter, that none of the four (4) trees and non-trees in question be removed or cut down in any manner.

Sincerely yours,

*Edwin H. Clock*

*Nancy M. Clock*

EDWIN H. CLOCK

NANCY M. CLOCK

Dated: April 30, 2016

Attachments

EXHIBIT NO. 1

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April 28, 2016



## URBAN FORESTRY ASSOCIATES, INC.

8 Willow Street San Rafael, CA 94901  
(415) 454-4212 info@urbanforestryassociates.com

### ARBORIST REPORT

*For-Nancy and Ed Clock  
150 Avenida Miraflores  
Tiburon, CA 94920*

#### PURPOSE

Urban Forestry Associates (UFA) was asked/hired by Nancy and Ed Clock to assess the subject trees located adjacent to the northwest corner of their property on Town of Tiburon property.

#### SCOPE OF WORK AND LIMITATIONS

Urban Forestry Associates has no personal or monetary interest in the outcome of this investigation. All observations regarding trees in this report were made by UFA, independently, based on our education and experience. All determinations of health condition, structural condition, or hazard potential of a tree or trees at issue are based on our best professional judgment.

#### OBSERVATIONS

The Cajeput Tree (a.k.a. Paperbark Tree) (*Melaleuca Quinquenervia*), is considered drought hardy and a "good street tree" (Sunset Garden Book) and does not propagate new or multiple trunks. In fact, the three separate and distinct *Melaleuca* trunks at the northwestern corner of the property line running along Francisco Vista Court were planted together to form a small grove-like cluster. Close spacing for this species is a standard landscaping practice. The Clock's purpose was to provide screening of vehicle headlights, sound and unwanted invasion of their privacy during a very busy construction period in their neighborhood.

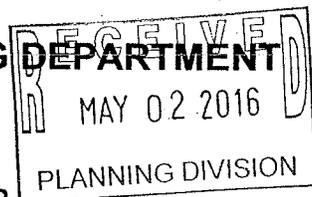
I have personally visually inspected the three trees in question on several occasions during the last approximate one year. It is my understanding that the three trees were clumped for screening purposes.

Ray Moritz, Urban Forester SAF Cert #241  
ISA Certified Tree Risk Assessor

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MEMORANDUM TO TOWN OF TIBURON PLANNING



To: Dan Watrous, Planning Manager, Town of Tiburon  
Re: Application of F. Hariri re Landscaping Located on APN 039-111-09  
From: Edwin H. Clock and Nancy M. Clock, Owners of APN 039-111-09  
Date: March 1, 2016

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On February 24, 2016 we received your "Courtesy Notice of Tree Permit Application" (Application), and by this Memorandum we wish herewith to express our several reasons supporting **our strong opposition to the Application.**

**The Maleleuca Quinquenervia (aka Cajeputs):** There are actually three (3) separate maleleuca planted in 1977-78, when our property was originally developed, adjacent to the intersection of Francisco Vista Court and Avenida Miraflores. All landscaping planted in the late 1970s consisted of drought-resistant flora owing to the severe drought experienced in Marin County during those years. Sunset Western Garden Book (2012 edition, page 439) confirms that this species of maleleuca requires only "little to regular water" and is also a "good street tree".

We have maintained the three maleleuca for the 37 years that we have lived and owned the property at 150 Avenida Miraflores, employing Marin Tree Service on a regular (quarterly) basis to prune and keep the maleleuca disease-free. During a site visit/site inspection on January 15, 2016, Deputy Public Works Director Joel Brewer confirmed his satisfaction with the manner in which all landscaping, including the maleleuca, were being maintained by us within the Town's right of way.

Furthermore, two (2) of the three (3) maleleuca fall outside the definition of a "tree" within the scope of Tiburon Municipal Code, Chapter 15A-2, page 4 because (i) the maximum height of all three (3) trees does not reach fifteen (15) feet (see Tree Survey prepared by Licensed Land Surveyor and Civil Engineer Lawrence Doyle dated 1/7/16 & 1/28/16); and (ii) the trunk

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circumference at 24 inches above ground is less than 20 inches (11 and 18.5 inches, respectively) for two of the three maleleuca.

We also submit that the maleleuca further several of the announced "purposes and policies" of Tiburon's Tree Ordinance, page 2, as follows: The maleleuca produce a very attractive, multi-colored pale green, light purple and yellowish white series of flowers at various times of the year (Sunset Western Garden Book, op. cit., page 439). They also create shade and privacy benefits from the large amount of vehicular traffic that passes by the West end of our property on a daily and nightly basis. The maleleuca have grown to heights of less than 15 feet in the nearly 40 years that they have been in the ground, with only minimal vertical pruning required during that time.

Lastly, we appreciate the Town's policy recognizing "that residents in single-family...zones should have the freedom to determine the nature of their private landscaped surroundings." (Tree Ordinance, chap. 15A-1(e), page 2).

**Italian Stone Pine Tree:** This tree, planted in the mid-1990s, with only one or two vertical prunings in the last decade, barely qualifies as a "tree" within the definition of the Tree Ordinance: it stands only 16.8 feet in height with a trunk circumference less than 32 inches.

Prior to planting the Italian stone pine, we informed and reviewed the planting with the then-residents and owners of 163 Avenida Miraflores, Mr. and Mrs. Hariri (see letter dated March 1, 1994). Until the filing of a lawsuit by one of the Hariri's daughters in June 2014 -- more than 20 years later -- we had never heard a single critical word or comment about our Italian stone pine from any person living in or owning any property in our neighborhood, including any of the Hariri family members.

This tree does not fall within the definition of an "undesirable tree" (Tree Ordinance, page 4) because it is not one of the named species and grows at only a "moderate" rate, meaning less than three feet per year (see Sunset Western Garden Book, op. cit., page 510). To the contrary, the Italian stone pine provides protection against erosion and is planted very

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nearby the location where a severe landslide occurred during the winter of 1982. Civil and Soils Engineer Jay Nelson and Geotechnical Engineer Craig Herzog have consistently recommended that we plant and maintain medium-sized trees along the South- and West-facing slopes of our property in order to minimize the dangers of erosion and landslides.

These Engineers' recommendations, which we have followed with the planting of several oak trees (defined as "protected trees" by the Tree Ordinance, page 3), liquid amber, fruit trees, and the Italian stone pine were part of our desire to support the Town's policy goals favoring "trees that can provide soil stability, noise buffering, and wind protection benefits, and...prevent erosion and debris flow landslides on the hilly terrain which characterizes most of Tiburon." (Tree Ordinance, page 2).

On the subject of wind protection benefits, the Italian stone pine trees lies due West of our home and decking, which means that its branches and needles absorb wind coming in from the prevailing direction of Richardson Bay and the Golden Gate Bridge. In 2002 and 2004, winds measuring 82 and 75 miles per hour, respectively, inflicted great damage to our property by causing long sections of our newly-installed redwood fence to break apart and the breakage of some of our half inch glass railing as a result of a neighbor's entire roof (5 Francisco Vista Court) being lifted away and flying onto and over our property all the way up to Avenida Miraflores.

The Italian stone pine produces edible pine nuts (Sunset Western Garden Book, op. cit., page 510) that are eaten by a variety of birds; it is drought-resistant (Sunset Western Garden Book, page 510); and it produces a quantity of sap in the summer and fall that attract pollinators, which the Audubon Society has declared to be an "endangered species" throughout much of California.

### **Reasons to Retain (not cut down) Both Melaleuca or Italian Stone Pine**

First, petitioner Hariri, through attorney Bonapart, makes much of the absence of permits to plant our trees/landscaping in 1977-78 and 1994. However, the only relevant and applicable ordinance (Tiburon Municipal Code, Chap. 15-A-3(c)) for the very first time became effective following its enactment by the Town of Tiburon in March 2001. Hence, the 1970s and

1990s plantings of the two landscaping flora at issue pre-dated any permit requirement.

Second, petitioner's principal, and really sole, argument against the maleleuca and Italian stone pine rests upon photographs taken by arborist MacNair in 2013 and 2014, none of which photographs represent the true status of any of the landscaping at issue at present. Rather, testimony and photographic presentation at trial in Marin County Superior Court Case No. 1402371 on January 27-29, 2016 by Consulting Arborist Ray Moritz of Urban Land Associates of San Rafael completely refuted all of petitioner's claims regarding the health, well-being and size or existence of the maleleuca and Italian stone pine tree (see Motion in Limine filed 1/27/16, and granted by Judge Chernus in large part).

In addition, Arborist Robert Morey of Marin Tree Service has repeatedly confirmed since 2004 that both the maleleuca and Italian stone pine are in excellent health and that they are being well maintained by Marin Tree Service and by us. Indeed, Deputy Public Works Director Joel Brewer, as previously indicated, confirmed the same to us on January 15, 2016 during his visit/site inspection of our property.

Third, former Town of Tiburon Attorney Gary Raghianti has repeatedly explained over the last 25 years that Tiburon Municipal Code, Title IV categorically exempts all landscaping planted on Town rights of way (Section 15-16) from all provisions of the "View and Sunlight Obstruction from Trees" Ordinance; hence, all claims and complaints being made by petitioner Hariri regarding alleged view obstruction are contrary to the View Ordinance's specific exemptions and may not properly be considered by the Town of Tiburon in this matter.

Fourth, neither the maleleuca nor the Italian stone pine are visible from any room inside the residence of any home or property in the entire neighborhood, with the exception only of 163 Avenida Miraflores. Hence, what public purpose is served by chopping down perfectly healthy and attractive landscaping for the single – but dubious and questionable – benefit of one individual?

Finally, In both 1983 and 2004, landscaping plans and landscaping already in place at our property were inspected and approved by both Town planning and building officials (see 6/17/83 memorandum and 3/2004 and 4/2004 documents).

For all of the above reasons, we respectfully submit that retaining – not chopping down – the maleleuca and Italian stone pine are in the best interests of the Town and we, the property owners who have maintained these flora for several decades and will continue to do so in good faith and with the assistance of professional arborists.

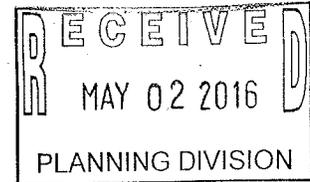
Attachments

To: Patti O'Brien, Tiburon Planning

From: Nancy Clock

Re: Landscape Plan for addition at 150 Avenida Miraflores

Date: June 17, 1983, revised



-----  
In response to your inquiries regarding our landscape plan, I have tried to reach you by phone with no success and so I am answering your questions, etc. via this memo to expedite matters.

1. Melaleuca – variety name is nesophila.
2. Liquid Ambar – variety name is styraciflua.

Please note with respect to these two items, and which also is generally true with all plant varieties in on our South- and West-facing slopes in particular, heights given in the Sunset Western Garden Book are for optimal growing location, which is valley floor or bottom land. Most all of our property is hillside soil and very rocky, compact and presents much more difficult growing conditions than valley floor land, so we are advised by our two professionals as follows: both the established and newly planted melaleuca; the newly –to be planted – myoporum; the existing oleander and established echium will reach a height from trunk in the ground of about 8-12 feet from the vertical level at which they were and are being planted. This is consistent with the original (1977-78) landscaping plan and the current landscape plan, as noted.

3. Viburnum Odoratissimum is the correct spelling.
4. Tecomaria is the correct spelling.
5. Leptospermum and Diosma are two separate plant varieties, and we are intending to plant both; they appear next to each other on the Cardinaux landscape plan.

Cc: Rene Cardinaux, AIA

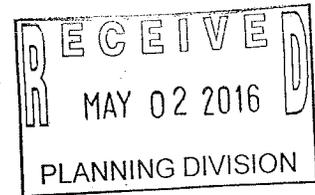
Ms. Tofer Delaney, landscape architect

EXHIBIT NO. 1

P. 10 OF 20

**150 AVENIDA MIRAFLORES  
TIBURON, CALIFORNIA 94920**

March 1, 1994



Dear Mr. and Mrs. Hariri, 163 Avenida Miraflores, Tiburon,

It was good to meet with you earlier this week, and we appreciated the exchange of your very nice rose cuttings/new rootstock with our plum, pear, apricot and apple seedlings.

You mentioned that your three children, Farnoosh, Farhad and Firouzeh, have never one single day lived at 163 Avenida Miraflores since you moved in 1979-80 and also that they previously relinquished to you whatever fractional ownership interests they may have had in the past, so we are advising you alone that we plan to plant a small, 5 gallon, Italian Stone pine tree at the extreme West end of our property; and that the tree will not grow taller, from a horizontal point of view from your home's dining room or kitchen, than the permitted eight (8) foot height from above-ground root system vertically of the existing *myoporum laetum* (see 1983 landscape plan approved by Town of Tiburon and by yourselves); nor, per verbal discussions with you and the Town, the pre-existing oleandears and *melaleuca nesophila* (see our revised letter dated June 17, 1983 to our mutual friend, Patti O'Brien), which are allowed to reach at least the same heights as the *myoporum laetum*.

Thank you for your consideration in this matter, and we look forward to a continuing good relationship with both of you going forward.

Sincerely yours,

| S | E. H. Clock & N. M. Clock

EDWIN H. CLOCK & NANCY M. CLOCK

P.S. We will stand by your side in your continuing battle with the Petris, 165 Avenida Miraflores, regarding property/boundary rights between your two parcels and whom we understand are also in conflict with the Kaplan family at 167 Avenida Miraflores, Tiburon.

EXHIBIT NO. 1  
P. 11 OF 20

**JOB ADDRESS** 150 AVENIDA MIRAFLORES

**OWNER** ED & NANCY CLOCK  
**ADDRESS** 150 AVENIDA MIRAFLORES  
**CITY / STATE / ZIP** TIBURON CA 94920  
**PHONE / FAX** 435-8854 435-8858

**DESIGNER/ARCHITECT** JOHN BELZ  
**ADDRESS** 101 CASA BUENA  
**CITY / STATE / ZIP** CORTE MADERA CA 94925  
**PHONE / FAX**  
**ENGINEER**  
**ADDRESS**  
**CITY / STATE / ZIP**  
**PHONE / FAX**

**RECEIVED** 1/8/04 **ISSUED** 2/20/04 **EXPIRES** 8/20/05

**AP #** 39-111-09 **ZONING**

**BUILDING TYPE** SINGLE FAMILY DWELLING  
**PERMIT TYPE** CONSTRUCTION  
**CLASS OF WORK** REPLACE

**PROJECT DESCRIPTION**  
 REPLACE AND EXTEND GLASS RAILING THAT WAS REMOVED IN 2002-03  
 Acc 1983-2004 landscaping inspected & approved.

**LICENSE NO.** 750244 **CLASS** B  
**CONTRACTOR** FIRST CLASS STRUCTURES  
**ADDRESS** 644 POWDER HORN AVE  
**CITY / STATE / ZIP** SANTA ROSA CA  
**PHONE / FAX** 282-8152

Thereby affirm under penalty of perjury that I am licensed under provision of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect. Verified by \_\_\_\_\_ DATE 2/20/04  
**SIGNATURE** \_\_\_\_\_

**VALUATION** \$ 4,000.00 **HISTORIC BLDG.**  
**PERMIT FEES** **NEW SQ. FT.**

PLAN CHECK	\$ 63.00	Conditioned Area	
RECEIPT #		Garage/Carport	
Received By		Deck Area	
BUILDING PERMIT	\$ 97.00	<b>CONDITIONS OF APPROVAL</b>	
BUSINESS LICENSE	\$ 15.00		
PLAN STORAGE	\$ 30.00		
CASE SEISMIC TAX	\$ 1.00		
PLUMBING	\$		
ELECTRICAL	\$		
MECHANICAL	\$		
GRADING	\$		
ENCROACHMENT	\$		
PENALTY	\$		
OCCUPANCY	\$		
STREET IMPACT	\$ 28.00		
TRAFFIC MITIGATION	\$		
D/R COMPLIANCE	\$ 25.00		
GEN. PLAN MAINT.	\$ 10.00		
<b>TOTAL</b>	<b>\$ 269.00</b>		
RECEIPT #	5035		
Received By			

RECEIVED  
 MAY 02 2016  
 PLANNING DIVISION

**OWNER BUILDER DECLARATION**  
 I hereby affirm under penalty of perjury that I am exempt from the Contractors License Law for the following reason (Sec. 7031.5 Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractors License Law Chapter 9 (commencing with Sec. 7000) of Division 3 of the Business and Professions Code) or that he is exempt there from and the basis for alleged exemption. Any violation of Sec. 7031.5 by any applicant for a permit shall be subject to a civil penalty of not more than five hundred dollars (\$500):

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of the property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of the sale).

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law). State law may provide for additional exemptions.

Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

**WORKERS COMPENSATION DECLARATION**  
 I hereby declare under penalty of perjury that  I have a current certificate of consent to self-insure, or  a current certificate of Workers Compensation Insurance, issued by \_\_\_\_\_  
 Policy # \_\_\_\_\_ Verified by \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

**"Certificate of Exemption from Workers Compensation Insurance"**  
 ( This section need not be completed if the permit is for one hundred (\$100) dollars or less). I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers Compensation Law of California.  
 Signature \_\_\_\_\_ Date 2/20/04  
 Notice to Applicant: If, after making this Certificate of Exemption, you should become subject to the Workers Compensation provision of the Labor Code, you must comply with such provisions or this permit will be revoked.

**DEPARTMENT APPROVALS**

Planning		
Town Eng.		
Sanitary Dist.		
Fire Dist.		
School Dist.		
Public Health		
Public Works		

I certify that I have read this application and state that the above information is correct. I agree to comply with all Town and County ordinances and State laws relating to building construction and hereby authorize representatives of this agency to enter upon the above mentioned property for inspection purposes. I (we) further agree to save, indemnify and keep harmless the Town of Tiburon against liabilities, judgments, costs and expenses which may in any way accrue against said Town in consequences of granting of this permit and will pay all expenses including attorneys fees in connection therewith. All work performed by virtue of this permit must conform to plans and specifications and application filed by the owner or his authorized agent with the Building Division. This permit does not constitute approval of any violation of the above provisions, nor of any State or Town ordinances. I agree to contact the Town for all required inspections including final. I hereby agree to complete all improvements required under this permit prior to occupancy, including but not limited to: building improvements, landscaping, parking, grading, and site and encroachment work.  
 Date 2/20/04  
 Signature of Applicant or Agent \_\_\_\_\_

This Permit is valid only when signed & dated, all fees paid & permit issued.  
 Building Official \_\_\_\_\_ Date 1/21/04

THIS PERMIT WILL EXPIRE 18 MONTHS FROM DATE OF ISSUE

JOB ADDRESS: 150 Avenida Miraflores ISSUED: 2/20/04 EXPIRES: 8/20/05

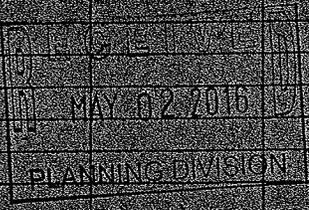
PROJECT: Ext. Vaulting (landscape) PLUMBING et al FOREMAN: [Signature]

INSPECTION DATE INSPECTOR INSPECTION DATE INSPECTOR

STRUCTURAL FINAL INSPECTION

- 1. Winterization Oct-Tune
- 2. Drilled Piers
- 3. Footings & Grade Beams
- 4. Reinforcing Steel
- 5. Holddowns
- 6. Underfloor
- 7. Foundation Survey
- 8. Drainage: PDI TDI
- 9. Ventilation Underfloor
- 10. Ventilation Attic
- 11. Framing
- 12. Roof Nailing
- 13. Exterior Shear
- 14. Interior Shear
- 15. Stucco: Lath Scratch
- 16. Fireplace
- 17. Insulation
- 18. Smoke Detectors
- 19. Drywall
- 20. Waterproofing: Deck, Roof
- 21. Soils & Structural Engineers letter required prior to: a) Conc. Pour b) Close-In

- 19. Insulation Certificate
- 20. Sub-Contractors List
- 21. Planning Dept. Approval
- 22. Public Works Approval
- 23. Fire Dept. Approval
- 24. Sanitary Dist. Approval
- 25. Soils Engineer Letter
- 26. Structural Engineer Letter
- 27. P.C. & T. Release
- 28. Re-evaluation Fees
- 29. Occupancy Certificate
- 30. Waste Management Plan



INSPECTORS NOTES:  
 4.1.04 O.E. FINAL PL  
 Ext. Landscaping Installed  
 1983-2004 approved PL

22. FINAL 4.1.04 PL

PLUMBING

- 23. Ground Plumbing
- 24. Rough Plumbing
- 25. Water Test
- 26. Gas Test
- 27. Shower Pan
- 28. Fire Sprinklers
- 29. Gas Service
- 30. Water Service

31. FINAL

ELECTRICAL

- 32. Temporary Power
- 33. Ground
- 34. Rough Wiring
- 35. Sub-Panel
- 36. GFCI
- 37. Service
- 38. Bond Water, Gas

39. FINAL

MECHANICAL

- 40. Rough-In
- 41. Combustion Air

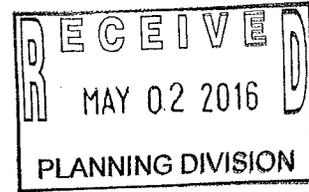
42. FINAL

TITLE 24 REQUIREMENTS

- 43. Furnace Model #
- 44. Efficiency Rating
- 45. Max. Output
- 46. Water Heater Model #
- 47. Insulation
- 48. FINAL

EXHIBIT NO. 1

1 ALBERT E. CORDOVA (State Bar No. 74283)  
2 A Professional Law Corporation  
3 1101 Fifth Ave., Suite 200  
4 San Rafael, California 94901  
5 Telephone: (415) 457-9656  
6 Telefacsimile: (415) 453-6260



7 Attorneys for Defendants  
8 EDWIN CLOCK and NANCY CLOCK  
9  
10  
11

12 THE SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF MARIN

14  
15 FIRUZE HARIRI, ) No. CV 1402371  
16 )  
17 Plaintiff(s), ) MOTION IN LIMINE TO  
18 vs. ) EXCLUDE CERTAIN OPINIONS  
19 EDWIN CLOCK, NANCY CLOCK, et al. ) OF JAMES MACNAIR  
20 Defendant(s). ) Date: February 26, 2016  
21 ) Time: 9:00 a.m.  
22 ) Judge: Hon. Roy R. Chernus

23 MacNair was disclosed on behalf of Plaintiff as an arborist-an expert on trees and  
24 plants. During the course of his deposition however, he rendered "opinions" that were totally  
25 outside the scope of his expertise and were purely speculative.  
26  
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1 First, Mr. MacNair opined that the landscape plan on file with the Town of Tiburon  
2 was in fact not the “approved” plan. He claims to have relied on certain documents, not  
3 produced in deposition, that were shown to him by Plaintiff’s counsel.

4 He also opined that the landscape plan was drafted with the intent of preserving  
5 certain view corridors. He acknowledged that he never spoke to the architect who drew up  
6 the plans concerning his “intent” nor did he speak with the persons who commissioned the  
7 plans, Mr. and Mrs. Clock.

8 Both of these opinions are improper and must be excluded. The records of the Town  
9 of Tiburon will speak for themselves and the Court will certainly be in the position to draw  
10 its own conclusions about what the Town records reflect. An arborist has no business  
11 rendering an “opinion” about the actions of a municipal entity. Nor does an arborist have  
12 any business rendering an opinion about the state of mind of other individuals with whom he  
13 has not even spoken. This is pure speculation.

14 **I**

15 **AN EXPERT’S OPINION MUST BE BASED ON**  
16 **PERSONAL OBSERVATION OR ON HYPOTHESES**  
**THAT FIND SUPPORT IN THE EVIDENCE.**

17 Mr. MacNair does not speak for the Town of Tiburon nor did he observe or  
18 participate in the Town’s actions with regard to the landscape plan at issue herein. At most,  
19 he has seen documents, not produced or authenticated, upon which he speculates about the  
20 Town’s intentions with regard to the landscape plans at issue in this case.

21 An expert’s opinion must be based “either on facts personally observed or on  
22 hypotheses that find support in the evidence.” (*George v. Bekins Van & Storage Co.* (1949),  
23 33 C2 834, 844; Evid. Code §803; *Hyatt v. Sierra Boat Co.* (1978) 79 CA3 325, 337).

24 The Law Revision Comment pertaining to Evidence Code §801 states: “Section 801  
25 deals with opinion testimony of a witness testifying as an expert; it sets the standard for  
26 admissibility of such testimony.”

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The Law Revision Commission further states in pertinent part:

It is possible, however, to formulate a general rule that specifies the minimum requisites that must be met in every case, leaving to the courts the task of determining particular detail within this general framework. This standard is expressed in subdivision (b) which states a general rule that is applicable whenever expert opinion is offered on a given subject.

Under subdivision (b), the matter upon which an expert's opinion is based must meet each of three separate but related tests. First, the matter must be perceived by or personally known to the witness or must be made known to him at or before the hearing at which the opinion is expressed. (Emphasis added).

As said in *Estate of Powers* (1947), 81 CA2 480, 485-486, "if the expert's opinion is not based upon facts otherwise proved, or assumes facts contrary to the only proof, it cannot rise to the dignity of substantial evidence."

While experts' testimony is subject to considerably more latitude than lay testimony, it is still subject to certain limitations so that it does not become a conduit for hearsay, speculation and conjecture. (Evidence Code Section 801; *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1523-1525.) Evidence Code Section 801 provides that an expert's testimony must be based upon matters upon which he may reasonably rely:

"If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: ... (b) Based upon matter (including his special knowledge, skill, experience, training and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert informing an opinion upon the subject to which his testimony relates unless an expert is precluded by law from using such matters as a basis of his opinion." (Emphasis added.)

Conjecture and speculation are not the proper basis for an expert's opinion because such a basis renders the opinion both unreliable and irrelevant, and the expert opinion therefore lacks a proper foundation (*Smith v. Acands, Inc.* (1994) 31 Cal.App.4th 77.) An expert cannot rely on speculation and conjecture to form his or her opinions, on unproven

1 facts, or on assumptions of fact based on insufficient data. See *Hyatt v. Sierra Boat Co.*,  
2 (1978) 79 Cal. App. 3d 325, 338; *Blecker v. Wolbart* (1985) 167 Cal. App. 3d 1195,1205;  
3 *Richard v. Scott* (1978) 779 Cal. App. 3d 57. An expert opinion that is based on speculation  
4 or conjecture is inadmissible. (See, generally, 1 Jefferson, California Evidence Bench Book,  
5 771-772, Section 2710; *Solis v. So. Calif. Rapid Transit District* (1980) 105 Cal.App.3d  
6 382.)

7 California Evidence Code §210 underscores the lack of relevance of evidence based  
8 upon speculation:

9 “‘Relevant evidence’ means evidence, including evidence  
10 relevant to the credibility of a witness or hearsay declarant,  
11 having any tendency and reason to prove or disprove any  
12 disputed fact that is of consequence to the determination of the  
13 action.”

14 “Even an expert witness cannot be permitted just to testify in a vacuum about things  
15 he might think could have happened.” *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325,  
16 338. “It is well settled that an expert’s *assumption of facts contrary to the proof destroys the*  
17 *opinion.*” *Id.*

18 The California Supreme Court in *People v. Gardeley* 14 Cal. 4th 605, 618 (1996),  
19 cert. denied, 522 U.S. 854 (1997) stated the rule as follows:

20 Of course, any material that forms the basis of an expert’s  
21 opinion testimony must be reliable. (1 Witkin, Cal. Evidence  
22 (3d ed. 1986) The Opinion Rule, § 477, p. 448.) For “the law  
23 does not accord to the expert’s opinion the same degree of  
24 credence or integrity as it does the data underlying the opinion.  
25 Like a house built on sand, the expert’s opinion is no better  
26 than the facts on which it is based.” (*Kennemur v. State of*  
27 *California*, supra, at p. 923.)

28 The “reasonableness” of the evidence relied upon by an expert is a foundational issue  
to be determined by the Court: “It affects the credibility and authority of the expert’s  
opinion.” *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 861 This is a  
“preliminary fact” to the admissibility of the expert’s opinion and thus determined by the  
court under Evidence Code §405.

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In applying sections 816 and 818 of the Evidence Code, the trial court must, in the first instance, make its own determination as to comparability of an offered sale or lease; it must determine from the foundational testimony offered, whether the statutory criteria are satisfied; this must be an independent determination by the trial court and not merely an acquiescence in the conclusions of the witness as to comparability and, accordingly, the reasons given by the experts are persuasive only to the extent that they are based on sound premises. (*citations*).  
*City of Ontario v. Kelber* (1972) 24 Cal.App.3d 959 at 970

In short, expert opinions should be excluded when they are speculative and conjectural and without evidentiary support.<sup>1</sup>

In this case, Mr. MacNair’s opinion regarding whether or not the Town of Tiburon approved certain landscape plans is completely outside of this field of expertise and constitutes rank speculation. Such an improper opinion must be excluded. Similarly, testimony concerning the “intent” of third parties is purely speculative and must be excluded.

**II**  
**TESTIMONY BY MACNAIR  
CONCERNING THE CONTENT OF  
DOCUMENTS SHOWN TO HIM BY  
COUNSEL MUST BE EXCLUDED FOR  
LACK OF FOUNDATION**

As a second and separate ground for exclusion of Mr. MacNair’s “opinion” concerning the approval of the landscape plan, it is properly excluded because his testimony is barred by Evidence Code §1523. If the content of a writing is in issue, either the original writing or admissible secondary evidence must be produced. Oral testimony is inadmissible to prove the content of a writing unless specified conditions are met. Evidence Code §§1520-1523. Oral testimony otherwise admissible under the secondary evidence rule is inadmissible to prove the content of a writing except as provided in Evidence Code §1523. Evidence Code §1523 allows for oral testimony *only if*:

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<sup>1</sup> Evid. Code. §803; see also *Korsak v. Atlas Hotels, Inc.* (1992) 2 CalAppAth 1516, 1524.

P. 18 OF 20

1 a. The writing is lost or destroyed: Oral testimony is allowed if the proponent does  
2 not have possession or control of a copy and the original is lost or has been destroyed  
3 without fraudulent intent. Evidence Code §1523(b); *Dart Indus., Inc. v. Commercial Union*  
4 *Ins. Co.* (2002) 28 Cal.4th 1059, 1071-1072;

5 b. The writing is beyond the reach of subpoena: Oral testimony is allowed if neither  
6 the writing nor a copy was reasonably procurable by the proponent through the court's  
7 process "or by other available means. Evidence Code §1523(c)(1); *Dart Indus., Inc., supra*,  
8 at 1068

9 Neither of these conditions has been met and testimony regarding the content of  
10 writings seen by Mr. MacNair is therefore inadmissible.

### 11 III

#### 12 TESTIMONY CONCERNING THE 13 CONTENT OF DOCUMENTS 14 CONSTITUTES INADMISSIBLE 15 HEARSAY

15 As a third and separate ground for exclusion, Mr. MacNair's opinions concerning  
16 approval of landscape plans by the Town of Tiburon constitute inadmissible hearsay.  
17 Hearsay evidence is "evidence of a statement that was made other than by a  
18 witness while testifying at the hearing and that is offered to prove the truth of the matter  
19 stated." (Cal. Evid. Code § 1200.) A "statement" is either an oral *or written* expression.  
20 Evidence Code §225. A typical example is a police report, commonly excluded as hearsay.

21 Under California's hearsay rule, all hearsay evidence is inadmissible unless it falls  
22 into a recognized exception. (Cal. Evid. Code §§ 1200, 1201.)

23 Plaintiff may argue that an expert may under certain circumstances rely on hearsay.  
24 However, this would be an oversimplification and would be entirely inappropriate under the  
25 facts of this case. An expert witness may state on direct examination both the reasons for his  
26 or her opinion and the matters on which it is based. Evidence Code §802; *People v. Catlin*  
27 (2001) 26 Cal.4th 81, 137

1 The opinion may be based on matters 'perceived by ... the witness ... before the  
2 hearing, whether or not admissible' *if of a type that experts reasonably rely upon in forming*  
3 *such opinions*. Evidence Code §801(b) (emphasis added); *People v. Catlin*, supra, 26 Cal.4th  
4 at 137

5 Expert witnesses are specifically permitted to state on direct examination that they  
6 have reviewed, considered and relied on inadmissible evidence of a type upon which experts  
7 reasonably rely. But such inadmissible evidence does not itself thereby become admissible.  
8 While an expert may state on direct examination the matters on which he or she relied, the  
9 expert may not testify as to the details of those matters if they are otherwise inadmissible.  
10 I.e., 'he may not under the guise of reasons bring before the jury incompetent hearsay  
11 evidence.' *People v. Coleman* (1985) 38 Cal.3d 69, 92

12 Likewise, while an expert may state on direct examination he or she relied on  
13 information contained in certain reports, the expert may not testify as to the contents of such  
14 reports. *Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388,  
15 416

16 In this case, there can be no foundation for an arborist's opinions concerning the  
17 effect of entries in the records of the Town of Tiburon—those records, if authenticated and a  
18 relevant, will speak for themselves.

19 Dated: January 24, 2016

20 Respectfully submitted,

21 ALBERT E. CORDOVA  
22 A Professional Law Corporation

23 By:           /s/ A.E. Cordova            
24 ALBERT E. CORDOVA  
25 Attorney for Defendants  
26 Ed and Nancy Clock  
27  
28



RECEIVED  
AUG 08 2016  
PLANNING DIVISION

# TOWN OF TIBURON NOTICE OF APPEAL

Town of Tiburon  
1505 Tiburon Boulevard  
Tiburon, CA 94920 Phone 415-435-7373  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

### APPELLANT(S)

(Attach additional pages if necessary)

Name: Edwin H. Clock & Nancy M. Clock

Mailing Address: 150 Avenida Miraflores Tiburon, CA. 94920

Telephone: 415-435-8854 (Work) 415-435-8879 (Home)

FAX and/or e-mail (optional): \_\_\_\_\_

### ACTION BEING APPEALED TREE2016-017

Review Authority Whose Decision is Being Appealed: Watrous, Daniel

Date of Action or Decision Being Appealed: Postmarked USPS 7/28/16,

Name of Applicant: Same as above received 07/30/16

Type of Application or Decision: Permit to Retain Trees & Non-Trees Planted in 1978-1979

### GROUND(S) FOR APPEAL

(Attach additional pages if necessary)

See Attached Materials.

EXHIBIT NO. 2

\*\*\*\*\*

STAFF USE ONLY BELOW THIS LINE

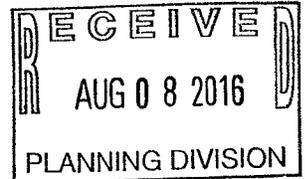
P. 1056

Last Day to File Appeal: 08/08/2016 Date Appeal Filed: 8/8/16

Fee Paid: \$500 Receipt No. R 659 Date of Appeal Hearing: TBD

APPEAL OF TOWN OF TIBURON PLANNING MANAGER

WATROUS DECISION DATED JULY 26, 2016



Grounds for appeal by Applicants Edwin H. Clock and Nancy M. Clock, residents at 150 Avenida Miraflores, Tiburon 94920 since June 1980, consist of the following:

First, please refer to the following documents already on file with the Town as relates to this matter: (i) Tree Permit Application dated May 7, 2016 (Application), with extensive attachments; (ii) Appeal dated April 30, 2016, with attachments; (iii) Memorandum dated March 1, 2016, with attachments; and (iv) Letter dated June 18, 2016 to Mr. Watrous.

Second, Section 15-16 of the Tiburon Municipal Code, Title IV, categorically exempts from all provisions of the "View and Sunlight Obstruction from Trees" any and all "Trees located on Town-owned property...Requests or complaints regarding [such] trees...should be made in writing to the superintendent of public works..." Former Town Attorney Gary Raghianti has recently explained the original intent and purpose of Section 15-16 as "designed to eliminate private parties from complaining about trees planted on Town properties."

Mr. Watrous' July 26<sup>th</sup> letter states that views are affected from 163 Avenida Miraflores by the trees and other landscaping referred to in the Application and, in essence, that is reason enough for all such landscaping to be cut down and removed. Applicants submit that such a finding and a determination conflicts with Section 15-16 and may not be a valid ground for destruction of trees and landscaping in place for nearly four (4) decades without a single word of complaint until the last 12-18 months. Finally, Section 15-16 designates the superintendent of public works as the sole decision maker regarding trees on Town property; as stated in the Application, Deputy Public Works Director Joel Brewer inspected all of the landscaping in question in January 2016 and expressed his satisfaction with the way all such landscaping was being maintained by Applicants. Therefore, Applicants believe that it would be appropriate to transfer all further consideration of the Application and the Appeal from the planning department to the department of public works.

Third, even if views affected by trees situated on Town property were a valid consideration, Applicants submit that the stand of ten (10) blue gum eucalyptus trees planted along 5 and 7 Francisco Vista Court, Tiburon – directly to the South and West of 150 Avenida Miraflores – are taller in height and elevation than any of the landscaping which Applicants seek to retain as part of the Application. Hence, as Arborist Ray Moritz of Urban Forestry Associates has noted, "**redundant view blockage**" by the 10 blue gum eucalyptus completely overshadows whatever view issues may be argued against the existence of Applicants trees and other landscaping being maintained on the Town's right of way.

Fourth, a review by Applicants of relevant Town files confirms that attorney M.K. Bonapart, acting on behalf of 163 Avenida Miraflores' owner, attempted unsuccessfully

EXHIBIT NO. 2  
P. 2 OF 6

in the third and fourth quarters of 2015 to have removed three sets of what were determined to be non-trees under the definitions contained Section 15A-2 of Tiburon Municipal Code, Chapter 15A: Trees, namely, the **cotoneaster glaucophyllus**; the **lingustrum japonicum, aka privet**; and the **eucalyptus torquata**

Because the Town has previously denied Bonapart's attempts to have the above-referenced non-trees removed, Applicants submit that the Town should act consistently toward the Application and allow the retention of these same flora for all of the reasons stated in the Application. One caveat is that the eucalyptus torquata was transplanted in approximately May 2016, removed from the Town right of way and, therefore, is no longer at issue as part of the Application or this Appeal.

Fifth, Applicants reiterate our continuing belief that the maintenance and retention of each of the flora described in the Application advance, conform with, and further the Town's policy objectives set forth in the Tree Ordinance, Section 15A-1 (a), (b) and (e), as follows: Shade-creating and privacy-creating benefits; soil stability, noise buffering, and wind protection benefits, and can help prevent erosion and debris flow landslides, particularly in the case of the Italian stone pine. In addition, ecological importance, visual enhancement, and residential privacy and quietness are furthered and advanced by the existence of these beautiful, ecologically-positive and extremely healthy trees and other landscaping – recently reconfirmed by Arborist Bob Morey of Marin Tree Service – that screen both headlamp and noise pollution for all residents of this neighborhood. (Policy #1, subsection (a)).

Sixth, although situated on the Town's right of way, all four species described above were planted well prior to the permit requirements enacted for the first time by the Town in the 2001 Tree Ordinance; and, at the time of planting, Applicants submit that our predecessors-in-interest and the professionals they employed (all named in the Application) acted responsibly and in furtherance of "the freedom to determine the nature of...private landscaped surroundings." (Policy #6, subsection (e)).

Finally, Title Expert Randy Fry of Marin Land Title Consulting performed extensive research on behalf of Applicants in 2014 and 2015 and determined that the public utility easement, or right of way, that the owners of 150 Avenida Miraflores proffered to public utilities and the Town in the late 1970s was not ever actually "accepted", at least in writing as far as records in the Marin County Recorder's Office are concerned. Hence, the argument could be made that the Town does not actually own – or even have a legal right of way – across, over or under the areas depicted on the two attached Maps developed by Marin Land Title Consulting.

EXHIBIT NO. 2  
P. 3 OF 6

Respectfully submitted,

*Edwin H. Clock*

EDWIN H. CLOCK

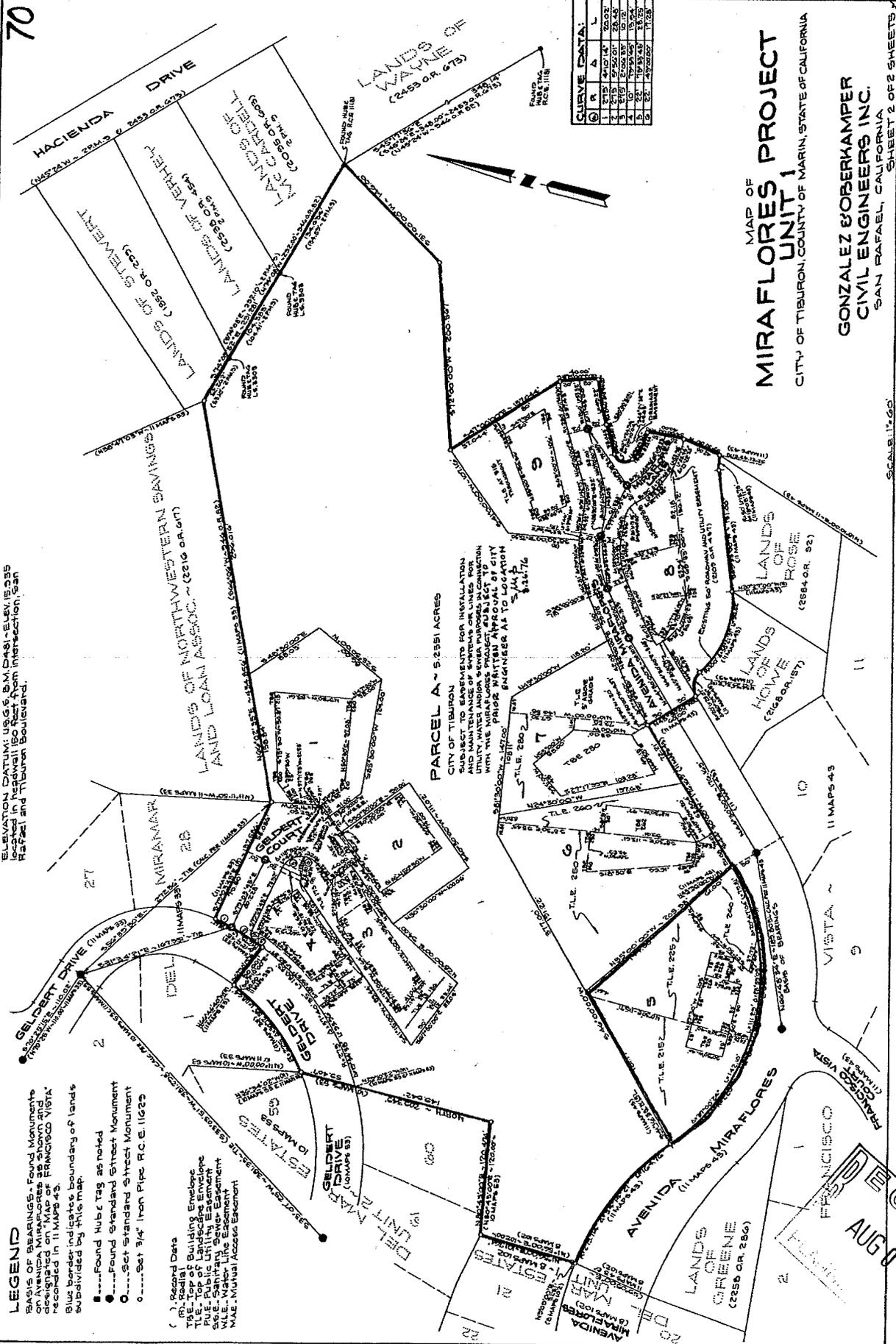
*Nancy M. Clock*

NANCY M. CLOCK

August 8, 2016

EXHIBIT NO. 2

P. 40-6



CURVE DATA:			
STATION	PI	PC	PT
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00
1+00.00	1+00.00	1+00.00	1+00.00

**MIRA FLORES PROJECT**  
**UNIT 1**  
 MAP OF

**GONZALEZ SOBERRAMPER**  
**CIVIL ENGINEERS INC.**  
 SAN RAFAEL, CALIFORNIA

SCALE: 1" = 60'

CITY OF TIBURON, COUNTY OF MARIN, STATE OF CALIFORNIA  
 SHEET 2 OF 2 SHEETS

ELEVATION DATUM: U.S. M. DASH - ELEV. 15355  
 BASED ON INTERSECTION, SAN RAFAEL AND TIBURON BOULEVARD.

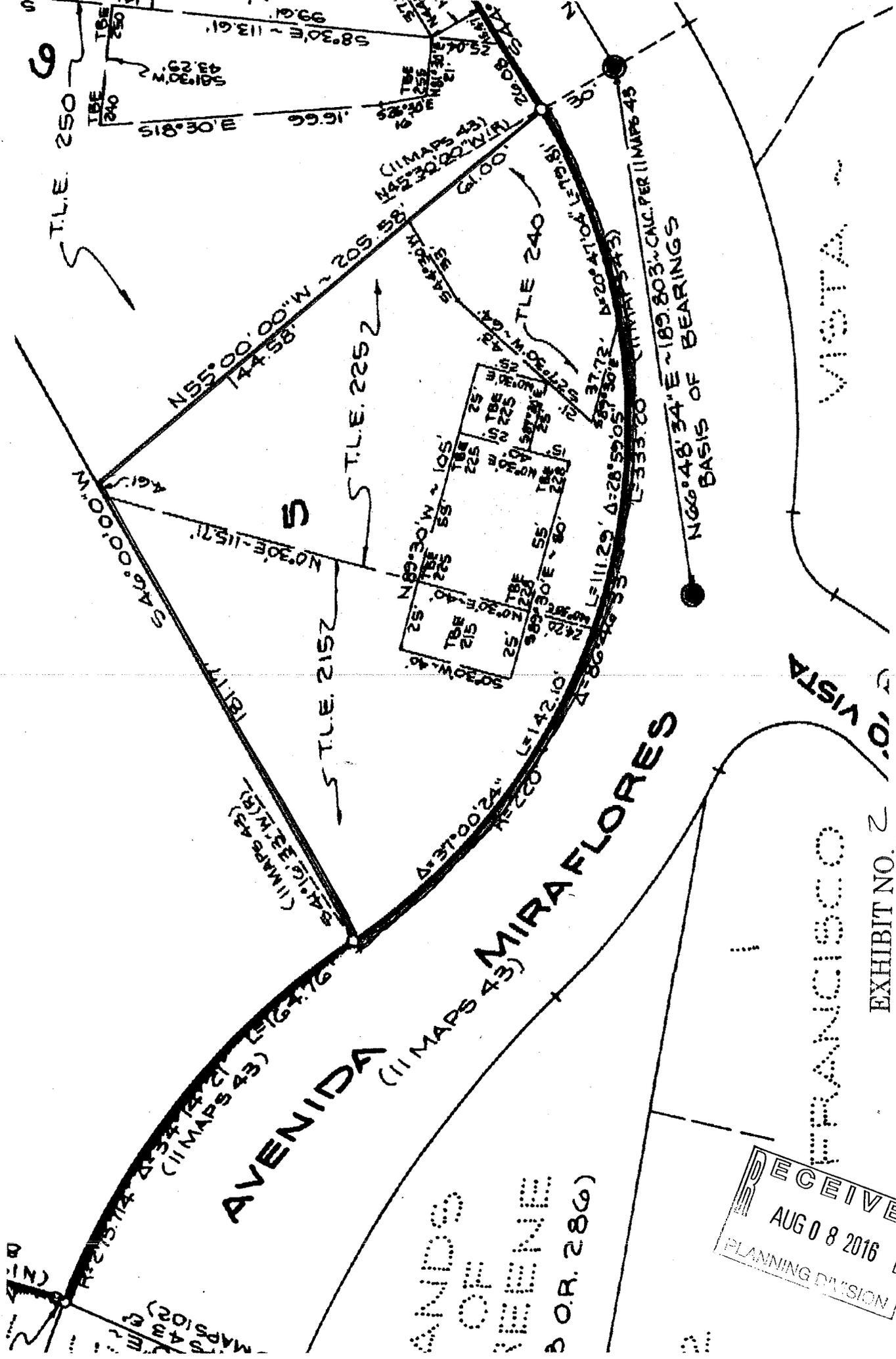
**LEGEND**  
 BASIS OF BEARINGS - FOUND MONUMENTS  
 BEARINGS AND DISTANCES AS SHOWN  
 DISTANCES AS SHOWN ON MAP OR RECORDED IN 11 MAPS 45.  
 BLUE BORDER INDICATES BOUNDARY OF LANDS SUBDIVIDED BY THIS MAP.  
 ● - Found Hub & Tag as noted  
 ○ - Found Standard Street Monument  
 ○ - Set Standard Street Monument  
 ○ - Set 3/4" Iron Pipe R.C.E. 11625

( ) - Record Data  
 (R) - Right of Building Easement  
 (L) - Left of Building Easement  
 (T) - Top of Landscaped Easement  
 (P) - Public Utility Easement  
 (S) - Shared Sewer Easement  
 (M) - Mutual Access Easement

**PARCEL A ~ 5.8581 ACRES**  
 CITY OF TIBURON  
 SUBJECT TO EASEMENTS FOR INSTALLATION OF WATER AND SEWER LINES IN CONNECTION WITH THE MIRA FLORES PROJECT AS SET FORTH WITH THE PIPE EASEMENTS AS TO LOCATION

EXHIBIT NO. 2  
 P. 5 OF 6

RECEIVED  
 AUG 8 2016



**AVENIDA MIRAFLORES**  
 (11 MAPS 43)

AND  
 OF  
 THE  
 S.O.R. 286)

FRANCISCO  
 VISTA

**RECEIVED**  
 AUG 08 2016  
 PLANNING DIVISION

EXHIBIT NO. 2

N66°48'34"E ~ 189.803' CALC. PER 11 MAPS 43  
 BASIS OF BEARINGS

T.L.E. 250

T.L.E. 2252

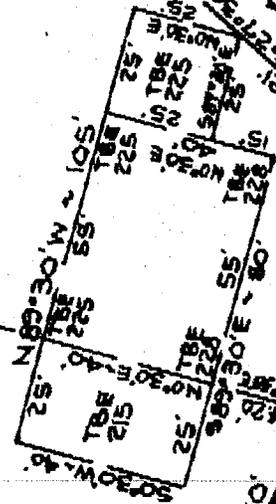
T.L.E. 240

S46°00'00"W

N55°00'00"W ~ 202.58'

(11 MAPS 43)  
 N45°30'00"W ~ 179.81'

(11 MAPS 43)  
 N66°48'34"E ~ 189.803' CALC. PER 11 MAPS 43



S8°30'E ~ 113.61'  
 S18°30'E ~ 16.66'  
 T.B.E. 250  
 T.B.E. 240  
 N. 0.0194  
 49.130' N

N0°30'E ~ 115.71'

N43°00'24\"/>

L=142.10'

L=111.29'

L=333.20'

Δ=28°59'05\"/>

Δ=20°47'04\"/>

Δ=37.72'

Δ=20°47'04\"/>

Δ=20°47'04\"/>

Δ=20°47'04\"/>

Δ=20°47'04\"/>

Δ=20°47'04\"/>

Δ=20°47'04\"/>

Δ=20°47'04\"/>

**RESOLUTION NO. 17-2010**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON  
ADOPTING AN AMENDED POLICY FOR THE PROCESSING, SCHEDULING,  
RECONSIDERATION, AND STORY POLE REPRESENTATION OF APPEALS, AND  
SUPERSEDING EXISTING POLICIES**

WHEREAS, the Town receives and hears appeals from decisions of various commissions, boards and administrative officials from time to time, and

WHEREAS, the Town Council has adopted various policies over the years with respect to appeal procedures, scheduling, and reconsideration, including Resolutions Nos. 2878 and 3218 and Town Council Policy Nos. 95-01 and 2002-01; and

WHEREAS, the Town Council has determined that it is timely and appropriate to update and consolidate these policies regarding appeals; and

WHEREAS, the Town Council has held a public meeting on this matter on March 17, 2010 and has heard and considered any public testimony and correspondence; and

NOW, THEREFORE, BE IT RESOLVED that Town Council Resolution No. 2878, Town Council Resolution No. 3218, Town Council Policy 95-01, and Town Council Policy 2002-01 are hereby superseded by this Resolution.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Town Council of the Town of Tiburon does hereby adopt the following general policy with respect to processing, scheduling, and reconsideration of appeals and for story pole installation for appeals.

***APPEAL PROCEDURE***

1. The Municipal Code sets forth instances when persons may appeal a decision by a review authority (e.g. Town official, Design Review Board or Planning Commission) to the Town Council. Any person making such an appeal must file a completed Town of Tiburon Notice of Appeal form, available on the Town's web site and at Town Hall, with the Town Clerk not more than ten (10) calendar days following the date of the decision being appealed. Shorter time frames for filing an appeal apply to certain types of permits. If the final day to appeal occurs on a day when Town Hall is closed for public business, the final day to appeal shall be extended to the next day at which Town Hall is open for public business. Appeals may not be revised or amended in writing after the appeal period filing date has passed.
2. The appellant must submit filing fees with the Notice of Appeal form. Filing fees are set forth in the Town's current adopted Fee Schedule.
  - (a) If the applicant is the appellant, the remainder of the filing fee (if any) will be refunded following completion of the appeal process. Additional staff time or costs to process an applicant's appeal is the financial responsibility of the applicant and will be billed per the Town's current hourly rate schedule and/or at actual cost if outside consulting is required.

EXHIBIT NO. 3

P. 1064

- (b) If the appellant is not the applicant, then a fixed amount filing fee is required with no refund or additional billing required.
3. In the appeal form, the appellant shall state specifically either of the following:
- (a) The reasons why the decision is inconsistent with the Tiburon Municipal Code or other applicable regulations; or
  - (b) The appellant's other basis for claiming that the decision was an error or abuse of discretion, including, without limitation, the claim that the decision is not supported by evidence in the record or is otherwise improper.

If the appellant is not the applicant, the Town Council need only consider on appeal issues that that the appellant or other interested party raised prior to the time that the review authority whose decision is being appealed made its decision.

4. The appellant must state all grounds on which the appeal is based in the Notice of Appeal form filed with the Town Clerk. Neither Town staff nor the Town Council need address grounds introduced at a later time that were not raised in the Notice of Appeal form.
5. The procedure for presentation of the appeal at the Town Council meeting is as described below. In cases where the applicant is the appellant, paragraphs (c) and (f) below would not apply.
- (a) Town Staff may make a brief (approximately 10 minute) presentation of the matter and then respond to Town Council questions.
  - (b) Appellant and/or appellant's representative(s) may make a presentation of no more than twenty (20) minutes and then respond to Town Council questions. Appellant may divide up the twenty (20) minutes between various speakers or have only one speaker, provided that the time limit is observed. Time devoted to responding to Town Council questions shall not be included as part of the twenty (20) minute time limit.
  - (c) Applicant and/or applicant's representative(s) may make a presentation of no more than twenty (20) minutes and then respond to Town Council questions. Applicant may divide up the twenty (20) minutes between various speakers or have only one speaker, provided that the time limit is observed. Time devoted to responding to Town Council questions shall not be included as part of the twenty (20) minute time limit.
  - (d) Any interested member of the public may speak on the item for no more than three (3) minutes. A speaker representing multiple persons (e.g., homeowner's association, advocacy group or official organization, etc.) may speak on the item for no more than five (5) minutes, at the discretion of the Mayor.
  - (e) Appellant is entitled to an up to three (3) minute rebuttal, if desired, of any comments previously made at the hearing.
  - (f) Applicant is entitled to an up to three (3) minute rebuttal, if desired, of any comments previously made at the hearing.

7. The testimony portion of the appeal hearing is closed and the Town Council will begin deliberations on the appeal. There will be no more applicant, appellant, or public testimony accepted unless requested by the Town Council.

8. If, following deliberation, the Town Council is prepared to make a decision on the appeal, it will direct Town staff to return with a draft resolution setting forth the decision, and the findings upon which it is based, for consideration at a future Town Council meeting. The

decision of the Town Council is not final until the resolution is adopted. Alternatively, if the Town Council is not prepared to make a decision on the appeal, it may:

- (a) Continue the appeal to a future date;
- (b) Remand the item to the review authority from which it was appealed for further hearing, review and action, with a specific description of the outstanding and unresolved issues and appropriate direction thereon; or
- (c) Refer the item to another review authority for its review and recommendations prior to further Town Council consideration.

9. Following a final decision by the Town Council, Town staff will promptly mail a Notice of Decision to the applicant and appellant.

### ***RECONSIDERATION***

If, after the Town Council has voted to direct staff to prepare a resolution of decision, significant new information comes to light, which information was previously unknown or could not have been presented at the appeal hearing due to circumstances beyond the parties' control and not due to a lack of diligence, the Town Council may entertain a motion to reconsider its direction to prepare a resolution of decision. Any such motion to reconsider must be made prior to adoption of the resolution of decision, and the motion must be made by a Councilmember who voted on the prevailing side in the vote sought to be reconsidered. Any Councilmember may second the motion. The Town Council may consider and vote on the motion to reconsider at that time, and if the motion carries, the matter shall be placed on a future agenda for further notice and hearing.

### ***SCHEDULING OF APPEALS***

1. The Town's policy is to schedule and hear appeals in an expeditious manner. Appeals will generally be heard at the first regular Town Council meeting that is at least fifteen (15) days after close of the appeal period. At the sole discretion of the Town Manager, the Town may schedule the appeal for a subsequent Town Council meeting based on the complexity of the matter, availability of key Town staff members and Councilmembers, agenda availability, or unusual circumstances. Town staff will make reasonable efforts to establish the hearing date for the appeal within three (3) working days of the close of the appeal period. The Town Clerk, in coordination with appropriate Town staff, will promptly advise all parties to the appeal of the selected hearing date.
2. The Town Manager will grant requests for continuances from the date established above in the event that all parties to the appeal agree in writing to a date specific for the continuance and that date is deemed acceptable by the Town Manager.
3. Attendance of parties to an appeal at the hearing is desired, but not required. The Town Council will consider written comments or representation by others in lieu of personal appearance.

### ***STORY POLES***

For appeals where story poles were erected for review of the original decision being appealed, a story pole representation shall be required for the Town Council's appeal review process, as follows:

EXHIBIT NO. 3 p. 3 of 4

1. A story pole plan showing the poles to be connected, including location and elevations of poles and connections, shall be submitted, reviewed, and accepted as adequate by Planning Division Staff prior to installation of the poles and connections.
2. Critical story poles, as determined by Staff, must be connected by means of ribbons, caution tape, rope or other similar and highly visible materials clearly discernable from a distance of at least three-hundred (300) feet in clear weather, to illustrate the dimensions and configurations of the proposed construction.
3. Story poles and connecting materials must be installed at least ten (10) days prior to the date of the appeal hearing before the Town Council.
4. Failure to install the poles and materials in a timely manner may result in continuance of the public hearing date.
5. Story poles must be removed no later than fourteen (14) days after the date of final decision by the Town Council.

### ***APPLICABILITY***

This policy, while primarily written for use by the Town Council, is intended to apply to the extent practicable to Town decision-making bodies, other than the Town Council, which may hear appeals from time to time. Be advised that certain types of appeals, such as appeals of staff-level design review application decisions to the Design Review Board, may have different deadlines for filing of the appeal than the ten (10) calendar days specified above.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon on March 17, 2010, by the following vote:

AYES: COUNCILMEMBERS: Collins, Fraser, Fredericks & O'Donnell

NOES: COUNCILMEMBERS: None

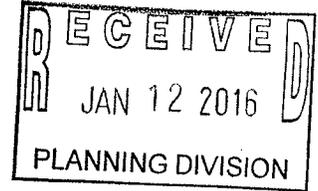
ABSENT: COUNCILMEMBERS: Slavitz

\_\_\_\_\_  
RICHARD COLLINS, MAYOR  
TOWN OF TIBURON

ATTEST:

\_\_\_\_\_  
DIANE CRANE IACOPI, TOWN CLERK

EXHIBIT NO. 3  
P. 4 OF 4



**TOWN OF TIBURON  
LAND DEVELOPMENT APPLICATION**

**TYPE OF APPLICATION**

- Conditional Use Permit
- Precise Development Plan
- Secondary Dwelling Unit
- Zoning Text Amendment
- Rezoning or Prezoning
- General Plan Amendment
- Change of Address
- Design Review (DRB)
- Design Review (Staff Level)
- Variance(s) \_\_\_\_\_ #
- Floor Area Exception
- Tidelands Permit
- Sign Permit
- Tree Permit
- Tentative Subdivision Map
- Final Subdivision Map
- Parcel Map
- Lot Line Adjustment
- Condominium Use Permit
- Certificate of Compliance
- Other \_\_\_\_\_

**APPLICANT REQUIRED INFORMATION**

**SITE ADDRESS:** Public Right of Way adjacent to 150 Avenida Miraflores. **PROPERTY SIZE:** \_\_\_\_\_  
**PARCEL NUMBER:** adjacent to APN 039-111-09 **ZONING:** R0-2

**PROPERTY OWNER:** Town of Tiburon  
**MAILING ADDRESS:** 1505 Tiburon Boulevard, Tiburon, CA 94920  
**PHONE/FAX NUMBER:** 415-435-7390 **E-MAIL:** \_\_\_\_\_

**APPLICANT (Other than Property Owner):** Firuze Hariri  
**MAILING ADDRESS:** 163 Avenida Miraflores, Tiburon  
**PHONE/FAX NUMBER:** \_\_\_\_\_ **E-MAIL:** \_\_\_\_\_

**ARCHITECT/DESIGNER/ENGINEER** \_\_\_\_\_  
**MAILING ADDRESS:** \_\_\_\_\_  
**PHONE/FAX NUMBER:** \_\_\_\_\_ **E-MAIL:** \_\_\_\_\_

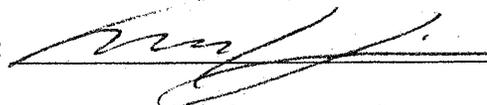
*Please indicate with an asterisk (\*) persons to whom Town correspondence should be sent.*

**BRIEF DESCRIPTION OF PROPOSED PROJECT (attach separate sheet if needed):** \_\_\_\_\_  
Seeking permission to remove and/or trim the five trees located in the public right of way of Avenida Miraflores adjacent to 150 Avenida Miraflores as highlighted in the partial survey attached hereto as Exhibit A to restore the historic views of the Applicant from 163 Avenida Miraflores.

I, the undersigned owner (or authorized agent) of the property herein described, hereby make application for approval of the plans submitted and made a part of this application in accordance with the provisions of the Town Municipal Code, and I hereby certify that the information given is true and correct to the best of my knowledge and belief.

EXHIBIT NO. 4  
P. 1 OF 26

I understand that the requested approval is for my benefit (or that of my principal). Therefore, if the Town grants the approval, with or without conditions, and that action is challenged by a third party, I will be responsible for defending against this challenge. I therefore agree to accept this responsibility for defense at the request of the Town and also agree to defend, indemnify and hold the Town harmless from any costs, claims or liabilities arising from the approval, including, without limitation, any award of attorney's fees that might result from the third party challenge.

Signature:  \*

Date: 12/29/15

*\*If other than owner, must have an authorization letter from the owner or evidence of de facto control of the property or premises for purposes of filing this application*

**DO NOT WRITE BELOW THIS LINE**

DEPARTMENTAL PROCESSING INFORMATION		
Application No.: <u>TREE2016-001</u>	GP Designation:	Fee Deposit: <u>\$280</u>
Date Received: <u>1/12/16</u>	Received By: <u>LS</u>	Receipt #: <u>R522</u>
Date Deemed Complete: <u>2/22/16</u>	Action: <u>APPROVED</u>	By: <u>DES</u>
Acting Body: <u>STAFF</u>	Date: <u>4/20/16</u>	Resolution or Ordinance # _____
Conditions of Approval or Comments: _____		

**NOTICE TO APPLICANTS**

Pursuant to California Government Code Section 65945, applicants may request to receive notice from the Town of Tiburon of any general (non-parcel-specific), proposals to adopt or amend the General Plan, Zoning Ordinance, Specific Plans, or an ordinance affecting building or grading permits.

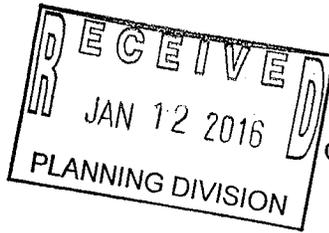
If you wish to receive such notice, then you may make a written request to the Director of Community Development to be included on a mailing list for such purposes, and must specify which types of proposals you wish to receive notice upon. The written request must also specify the length of time you wish to receive such notices (s), and you must provide to the Town a supply of stamped, self-addressed envelopes to facilitate notification. Applicants shall be responsible for maintaining the supply of such envelopes to the Town for the duration of the time period requested for receiving such notices.

The notice will also provide the status of the proposal and the date of any public hearings thereon which have been set. The Town will determine whether a proposal is reasonably related to your pending application, and send the notice on that basis.

Such notice shall be updated at least every six weeks unless there is no change to the contents of the notice that would reasonably affect your application.

Requests should be mailed to:

**Town of Tiburon**  
**Community Development Department**  
**Planning Division**  
**1505 Tiburon Boulevard**  
**Tiburon, CA 94920**  
**(415) 435-7390 (Tel) (415) 435-2438(Fax)**  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)



**TOWN OF TIBURON**  
 COMMUNITY DEVELOPMENT DEPARTMENT  
 1505 Tiburon Boulevard  
 Tiburon, CA 94920  
 Planning Division (415) 435- 7390 (T) (415) 435-2438 (F)  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

**TREE PERMIT APPLICATION**

Address: Public Right of Way on Avenida Miraflores adjacent to 150 Avenida Miraflores

Assessor's Parcel Number: 039-111-09 Zoning: RO-2

Number of trees to be removed: Five (5)

Species of trees: Italian Stone Pine (1), Eucalyptus Ficifolia (2), Melaleuca Quir. (3), Cotoneaster (5), and Privet (6)  
 (Numbers) refer to those shown on Exhibit A attached hereto showing the location of said trees on the partial survey of the public right of way and 150 Avenida Miraflores.

Size of trees (circumference in inches): \_\_\_\_\_

Reasons for trees to be removed or altered: See Attached.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach a completed Land Development Application Form and site plan along with separate sheets as necessary)

Applicant has requested that the Clocks either remove or trim these trees so that they do not unreasonably interfere with her historic views. The Clocks have refused to trim or remove these trees.

Office Use Only

File Number: TREE2016-001

Date Received: 1/12/2016

EXHIBIT NO. 4  
 P. 3 OF 26

**Tree Permit Application**  
**Town Property adjacent to 150 Avenida Miraflores**  
**Reasons for trees to be removed or altered:**

Applicant, Firuze Hariri, asserts that the trees identified in this permit application that impair her historic views from her property located at 163 Avenida Miraflores are located within the Town of Tiburon right of way of Avenida Miraflores adjacent to 150 Avenida Miraflores that is owned by Edwin and Nancy Clock. Applicant has either owned or occupied 163 Avenida Miraflores since 1979. Applicant asserts that prior to the major remodel of 150 Avenida Miraflores by the Clocks in or about 1983, there were no trees or vegetation, aside from ice plant and native grasses located on the Town of Tiburon's right of way.

Applicant, is informed and believes that, some time subsequent to 1983, the Clocks' or their agents planted the now existing trees and vegetation on Town property that unreasonably obstruct the Applicant's historic views as provided for in Chapter 15-4 of the Tiburon Municipal Code. Applicant is further informed and believes that the neither the Clocks nor any other person or entity, at any time since 1983, applied for a permit to plan the trees and vegetation that are subject of this application in the Town's property as required by Chapter 15A-3c of the Tiburon Municipal Code. In addition, at least three of the trees in question can be considered "undesirable" and, therefore, no permit would likely have been granted even if application had been made. In the Deposition of Edwin Clock taken in Marin Superior Court Case No. CIV 1402371 *Hariri v Clock* Mr. Clock admits to planting some of the trees in question and confirms that he never sought nor obtained any permit to plant any trees or vegetation on the Town's property.

Applicant requests that she be allowed to remove the two (2) trees identified in this application, whose trunk circumference at 24 inches above grade exceeds 20 inches, that were planted subsequent to 1983 on Town property without a permit to restore the views from her primary living spaces. In the alternative, Applicant requests permission to prune as needed on an ongoing basis any trees allowed to remain. However, trimming without complete removal will not be sufficient to restore Applicant's views as provided for in Chapter 15-4 of the Tiburon Municipal Code. Moreover, trimming will necessitate the creation of an ongoing duty upon Applicant and the Town from annual applications for permission to trim and the associated costs. For these reasons, Applicant believes that removal is the only course of action to achieve full remediation of her views while lessening the burden on both Applicant and the Town that may be created if only trimming is allowed.

Applicant encloses the following exhibits in support:

Exhibit A	Trunk Circumferences of each Tree
Exhibit B	Partial survey of 150 Avenida Miraflores prepared by ILS Associates that evidences the boundary between the Clocks' property and the Town's and the location, type, and size of the two (2) trees that this application seeks to remove from Town property.
Exhibit C	Photographs taken prior to the Clock remodel in 1983 that shows only ice plant and native grasses located in the Town of Tiburon right of way; and
Exhibit D	Copy of Landscape Plan on file in the Town of Tiburon official records from Clock 1983 Remodel that evidences that the Town of Tiburon property adjacent to the Clock property (150 Avenida Miraflores) has only "existing ice plant and native grasses;"
Exhibit E	Photograph of Clock Property (150 Avenida Miraflores) in 2002 that shows unobstructed view above "berm;"
Exhibit F	Photograph of current height of trees and vegetation on Town of Tiburon property as viewed from 163 Avenida Miraflores;
Exhibit G	Deposition Testimony of Edward Clock admitting to planting some, though not all, of the offending trees/vegetation; and
Exhibit H	Letter from Bonapart & associates to Clocks providing legal bases for removal.

EXHIBIT NO. 4

P. 5 OF 26

# Exhibit "A"

EXHIBIT NO. 4  
P. 6 OF 26

Tiburon ROW Trunk Circumference Chart (Clock Planting)

Tree #	# of Trunks	Trunk Diameter #1	Trunk Diameter #2	Trunk Diameter #3	Trunk Diameter #4	Trunk Diameter #5	Stem Area Totals	Equivalent Trunk Diameter	Equivalent Trunk Circumference (@24")
Italian stone pine ( <i>Pinus pinea</i> )	4	3	4.5	6	7	11	184.7	15.34	48.2
cajeput ( <i>Melaleuca quinquenervia</i> )	3	3.5	6	7.5			82.0	10.22	32.1

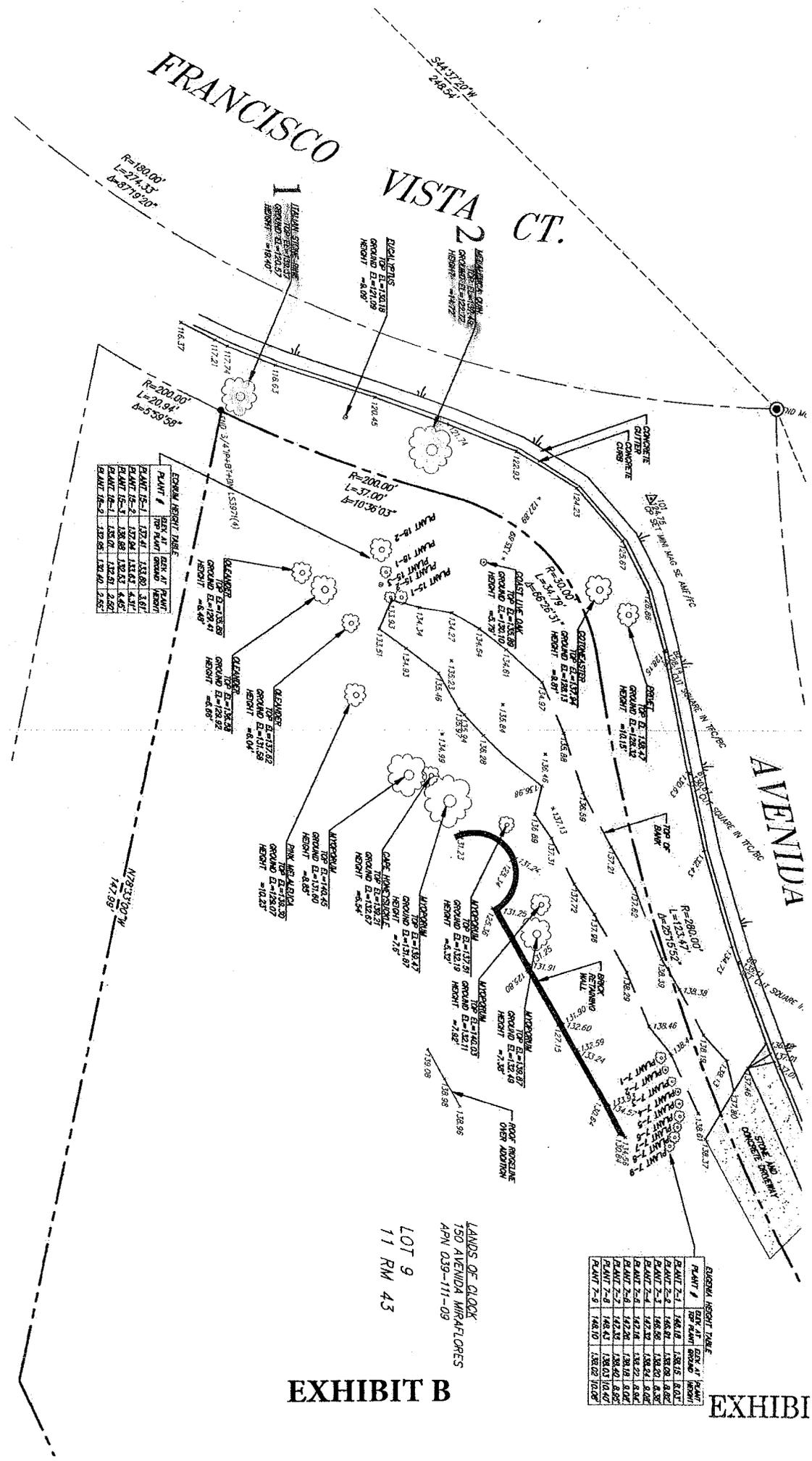
Exhibit A

EXHIBIT NO. 4  
P. 7 OF 26

# Exhibit "B"

EXHIBIT NO. 4  
P. 8 OF 26

# FRANCISCO VISTA CT.



GENERAL HEIGHT TABLE

PLANT #	TOP PLANT	GEN. H. FEET	PLANT
1	127.41	133.00	3.0T
2	127.24	133.00	4.5T
3	138.08	138.00	4.5T
4	138.08	138.00	4.5T
5	138.08	138.00	4.5T
6	138.08	138.00	4.5T
7	138.08	138.00	4.5T
8	138.08	138.00	4.5T
9	138.08	138.00	4.5T

GENERAL HEIGHT TABLE

PLANT #	TOP PLANT	GEN. H. FEET	PLANT
1	144.18	138.00	8.0T
2-1	146.82	138.00	8.0T
2-2	142.32	138.00	8.0T
2-3	142.32	138.00	8.0T
2-4	142.32	138.00	8.0T
2-5	142.32	138.00	8.0T
2-6	142.32	138.00	8.0T
2-7	142.32	138.00	8.0T
2-8	142.32	138.00	8.0T
2-9	142.32	138.00	8.0T
2-10	142.32	138.00	8.0T
2-11	142.32	138.00	8.0T
2-12	142.32	138.00	8.0T
2-13	142.32	138.00	8.0T
2-14	142.32	138.00	8.0T
2-15	142.32	138.00	8.0T
2-16	142.32	138.00	8.0T
2-17	142.32	138.00	8.0T
2-18	142.32	138.00	8.0T
2-19	142.32	138.00	8.0T
2-20	142.32	138.00	8.0T
2-21	142.32	138.00	8.0T
2-22	142.32	138.00	8.0T
2-23	142.32	138.00	8.0T
2-24	142.32	138.00	8.0T
2-25	142.32	138.00	8.0T
2-26	142.32	138.00	8.0T
2-27	142.32	138.00	8.0T
2-28	142.32	138.00	8.0T
2-29	142.32	138.00	8.0T
2-30	142.32	138.00	8.0T
2-31	142.32	138.00	8.0T
2-32	142.32	138.00	8.0T
2-33	142.32	138.00	8.0T
2-34	142.32	138.00	8.0T
2-35	142.32	138.00	8.0T
2-36	142.32	138.00	8.0T
2-37	142.32	138.00	8.0T
2-38	142.32	138.00	8.0T
2-39	142.32	138.00	8.0T
2-40	142.32	138.00	8.0T
2-41	142.32	138.00	8.0T
2-42	142.32	138.00	8.0T
2-43	142.32	138.00	8.0T
2-44	142.32	138.00	8.0T
2-45	142.32	138.00	8.0T
2-46	142.32	138.00	8.0T
2-47	142.32	138.00	8.0T
2-48	142.32	138.00	8.0T
2-49	142.32	138.00	8.0T
2-50	142.32	138.00	8.0T
2-51	142.32	138.00	8.0T
2-52	142.32	138.00	8.0T
2-53	142.32	138.00	8.0T
2-54	142.32	138.00	8.0T
2-55	142.32	138.00	8.0T
2-56	142.32	138.00	8.0T
2-57	142.32	138.00	8.0T
2-58	142.32	138.00	8.0T
2-59	142.32	138.00	8.0T
2-60	142.32	138.00	8.0T
2-61	142.32	138.00	8.0T
2-62	142.32	138.00	8.0T
2-63	142.32	138.00	8.0T
2-64	142.32	138.00	8.0T
2-65	142.32	138.00	8.0T
2-66	142.32	138.00	8.0T
2-67	142.32	138.00	8.0T
2-68	142.32	138.00	8.0T
2-69	142.32	138.00	8.0T
2-70	142.32	138.00	8.0T
2-71	142.32	138.00	8.0T
2-72	142.32	138.00	8.0T
2-73	142.32	138.00	8.0T
2-74	142.32	138.00	8.0T
2-75	142.32	138.00	8.0T
2-76	142.32	138.00	8.0T
2-77	142.32	138.00	8.0T
2-78	142.32	138.00	8.0T
2-79	142.32	138.00	8.0T
2-80	142.32	138.00	8.0T
2-81	142.32	138.00	8.0T
2-82	142.32	138.00	8.0T
2-83	142.32	138.00	8.0T
2-84	142.32	138.00	8.0T
2-85	142.32	138.00	8.0T
2-86	142.32	138.00	8.0T
2-87	142.32	138.00	8.0T
2-88	142.32	138.00	8.0T
2-89	142.32	138.00	8.0T
2-90	142.32	138.00	8.0T
2-91	142.32	138.00	8.0T
2-92	142.32	138.00	8.0T
2-93	142.32	138.00	8.0T
2-94	142.32	138.00	8.0T
2-95	142.32	138.00	8.0T
2-96	142.32	138.00	8.0T
2-97	142.32	138.00	8.0T
2-98	142.32	138.00	8.0T
2-99	142.32	138.00	8.0T
2-100	142.32	138.00	8.0T

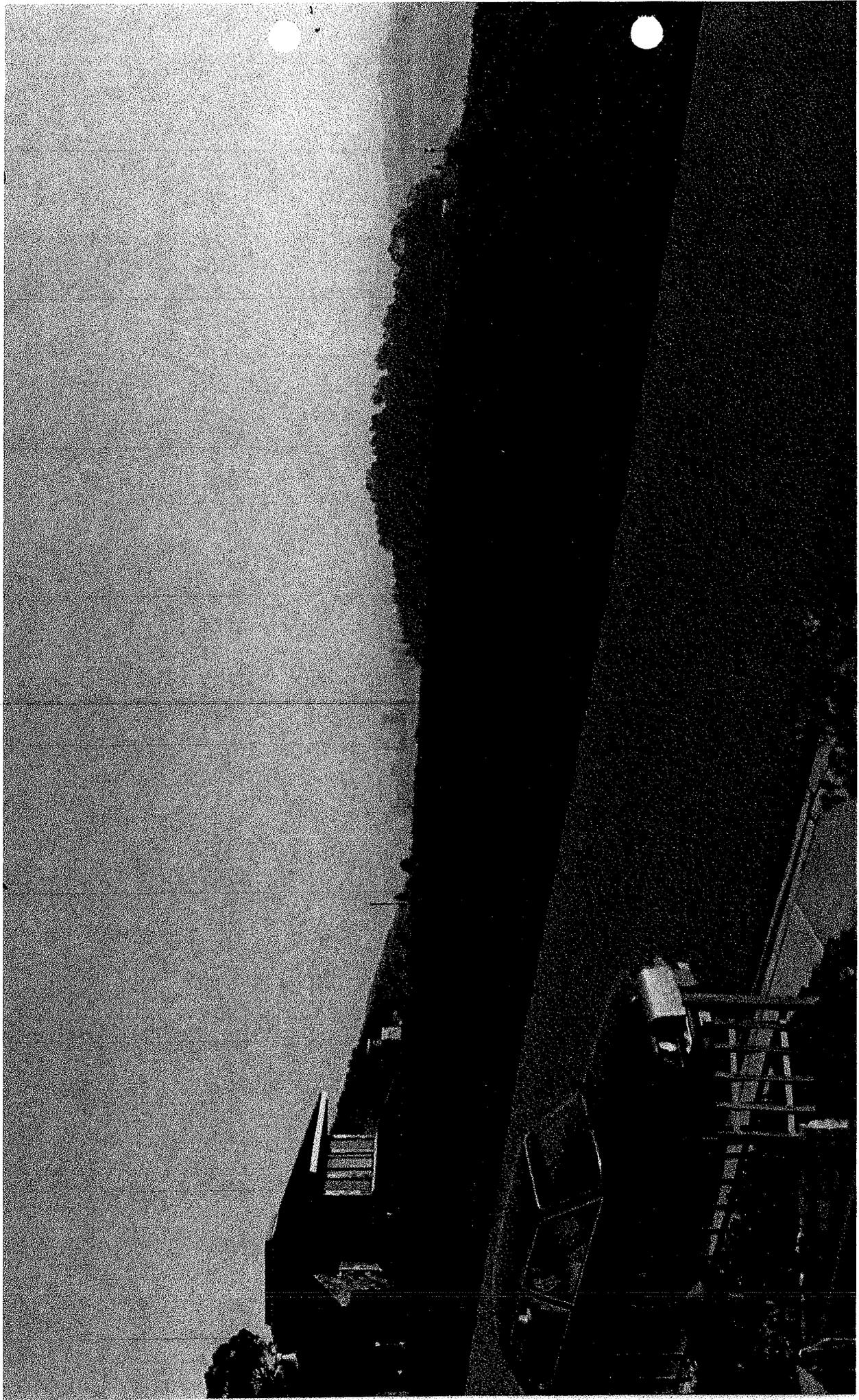
LANDS OF CLOCK  
 150 AVENIDA MIRAFLORES  
 APN 039-111-09

LOT 9  
 11 RM 43

## EXHIBIT B

# Exhibit "C"

EXHIBIT NO. 4  
P. 10 OF 26



View of Town of Tiburon Property From 163 Avenida Miraflores Prior to 1983 Addition

EXHIBIT NO. 4  
P. 11 OF 26

Exhibit C



View of Town of Tiburon Property From 163 Avenida Miraflores Prior to 1983 Addition  
Exhibit C

EXHIBIT NO. 4  
P. 12 OF 26

# Exhibit "D"

EXHIBIT NO. 4  
P. 13 OF 26



# Exhibit "E"

EXHIBIT NO. 4  
P. 15 OF 26

CHOCK RESIDENCE - 150 AVENIDA MIRAFLORES



RECEIVED

JAN 10 2002

PLANNING DEPARTMENT  
TOWN OF TIBURON

EXHIBIT NO. 4

P. 16 OF 26

View of Town of Tiburon Property From 163 Avenida Miraflores in 2002

Exhibit E

BELZ ASSOCIATES  
101 Casa Buena Dr., Ste. C  
Corte Madera, CA 94925

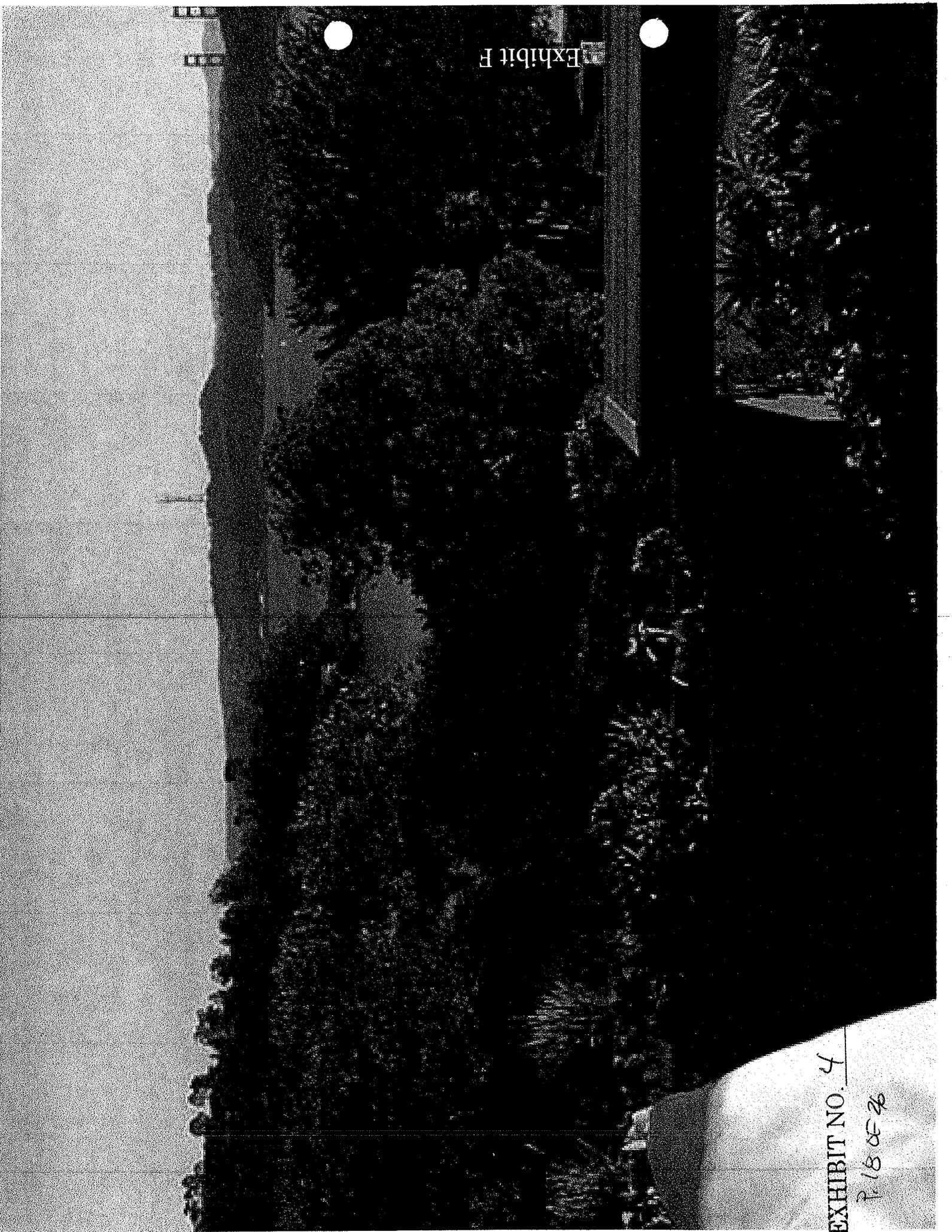
# Exhibit "F"

EXHIBIT NO. 4  
P. 17 OF 26

EXHIBIT NO. 4

P. 18 of 26

Exhibit F



# Exhibit "G"

EXHIBIT NO. 4  
P. 19 OF 26

1 Q. Do you know whether she was still alive? 01:35:19  
2 A. She was older than I was. So I hope she's 01:35:22  
3 still alive, but I don't know. 01:35:26  
4 Q. Do you know when she left the employ of the 01:35:30  
5 Town of Tiburon? 01:35:35  
6 A. No. 01:35:38  
7 Have you got that document that Al gave you 01:35:42  
8 this morning, 2004 inspection, building inspection? I 01:35:45  
9 might be able to remember her name if you show me that. 01:35:47  
10 Q. Here is a copy of all of the documents you 01:35:53  
11 produced today other than the full-sized versions. 01:35:56  
12 A. Okay. 01:36:04  
13 (Reviewing document.) I can't read this 01:36:14  
14 person's signature, so it's not going to help, 01:36:16  
15 unfortunately. 01:36:18  
16 Q. Okay. There's an Italian stone pine adjacent 01:36:24  
17 to your property on Town property? 01:36:27  
18 A. Yes. 01:37:02  
19 Q. At the west-end corner -- west-end corner 01:37:02  
20 adjacent to your property, correct? 01:37:07  
21 A. That's right. 01:37:09  
22 Q. Who planted that? 01:37:09  
23 A. Nancy and I. 01:37:12  
24 Q. Why? 01:37:12  
25 A. Thought it was decorative, and it was a gift. 01:37:14

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1 Q. From? 01:37:19  
2 A. Her office. 01:37:19  
3 Q. And when did you plant it? 01:37:20  
4 A. In the '90s. I think before we planted that, 01:37:23  
5 we hand-delivered. 01:37:33  
6 MR. CORDOVA: The answer was in the 1990s. 01:37:34  
7 THE WITNESS: Sorry. 01:37:36  
8 MS. BONAPART: Q. And I'm assuming since it 01:37:37  
9 was planted in the 1990s, it wasn't on any landscape 01:37:39  
10 plan that had been submitted to the Town? 01:37:42  
11 A. No. 01:37:44  
12 Q. Correct? 01:37:45  
13 A. That is correct. 01:37:45  
14 Q. And did you ever notify the Town that you were 01:37:46  
15 planning on planting the Italian stone pine? 01:37:56  
16 A. I don't know. 01:38:01  
17 Q. At the time you planted it, did you realize you 01:38:03  
18 were planting it on property other than your own? 01:38:06  
19 A. No. 01:38:08  
20 Q. At what point did you become aware that the 01:38:11  
21 Italian stone pine was planted on property other than 01:38:14  
22 your own? 01:38:18  
23 A. When I obtained the Oberkamper & Company [sic] 01:38:18  
24 survey in the early 2000s. 01:38:22  
25 Q. 2002? 01:38:23

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1 A. I don't have it in front of me. I think that 01:38:26  
2 was the date, but I'm not sure. 01:38:29  
3 Q. When you found out from the Oberkamper survey 01:38:31  
4 that is the Italian stone property was not on your 01:38:33  
5 property but instead on Town property, what, if 01:38:35  
6 anything, did you do to notify the Town? 01:38:40  
7 A. Well, I periodically speak to Public Works 01:38:42  
8 Department because I do a lot of community service in 01:38:44  
9 Marin County, and I'm up in the open space both with my 01:38:50  
10 dog and I was a scout leader, and so I bump into them 01:38:54  
11 and talk to them from time to time and told them there 01:38:56  
12 are these trees that are -- that are on your right of 01:38:58  
13 way. They said, "It's not our property. It's a right 01:39:07  
14 of way." They tended to make that distinction. I'm not 01:39:11  
15 sure what it is. 01:39:14  
16 So yeah, I discussed it with them, and they 01:39:15  
17 didn't care at all. They said, "It looks great. We 01:39:18  
18 wish more neighbors would do that." 01:39:22  
19 Q. Okay. Who were the people in Public Works with 01:39:22  
20 whom you had these discussions regarding planting the 01:39:27  
21 Italian stone pine? 01:39:31  
22 A. They don't wear name tags. They drive around 01:39:33  
23 in pairs in white pickup trucks. There are a bunch of 01:39:37  
24 them. I don't know their names. This was 15, 18 years 01:39:41  
25 ago. 01:39:45

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1 Q. So some guys happen to be driving down the 01:39:45  
2 street, and you flag them down -- 01:39:48  
3 A. No, no, no. They park -- they park along the 01:39:48  
4 street and they do work. They remove weeds and they 01:39:51  
5 water certain things and they sweep up trash and pick up 01:39:54  
6 rocks and things like that. 01:39:58  
7 Q. Okay. So what was the context of this 01:39:59  
8 conversation or conversations that you were having with 01:40:02  
9 these Public Works individuals who happen to be -- 01:40:06  
10 A. At that time -- yeah. As I recall, they were 01:40:08  
11 painting one of the curbs red. And they were there for 01:40:11  
12 a few hours painting the curb red right in front of 01:40:17  
13 those trees that are on the Francisco Vista Court side 01:40:21  
14 of our property. 01:40:27  
15 Q. Okay. So guys working for the Public Works 01:40:28  
16 Department were out painting the curb red, and you 01:40:35  
17 happened to engage in conversation. 01:40:37  
18 A. M-hm. I was working at that time in the yard, 01:40:39  
19 so I saw them. 01:40:42  
20 Q. And you brought up the subject of the Italian 01:40:42  
21 stone pine being in the right of way? 01:40:46  
22 A. Of all those trees being in the right of way, 01:40:48  
23 yeah. 01:40:50  
24 Q. And by "all those trees," tell me what you're 01:40:51  
25 referring to. 01:40:57

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1 A. Well, one would have to look at the survey to 01:40:59  
2 be precise. But it's at least the three melaleuca and 01:41:07  
3 the Italian stone pine tree and the privet and -- I can 01:41:06  
4 never think of the name of the red berry tree. We used 01:41:13  
5 to call it a Christmas tree. Those five or six. 01:41:16  
6 Q. Cotoneaster? 01:41:21  
7 A. Is that what it is, the one with the red 01:41:25  
8 berries? Okay. 01:41:30  
9 Q. The one right next to the privet? 01:41:31  
10 A. Yeah. 01:41:33  
11 Q. That's a cotoneaster. 01:41:33  
12 A. Okay. 01:41:34  
13 Q. And the red-flowering gum eucalyptus? 01:41:34  
14 A. That was later planted. 01:41:35  
15 Q. Okay. But all of the trees you just mentioned 01:41:37  
16 were planted by you and Nancy? 01:41:40  
17 A. No, none of them were planted by Nancy and me 01:41:41  
18 except for the Italian stone pine tree. They were all 01:41:46  
19 there when we bought the house. 01:41:49  
20 Q. I misunderstood. I thought when you were 01:41:51  
21 talking with the Public Works people about having 01:41:54  
22 planted the Italian stone pine and them telling you how 01:41:58  
23 they wish more people would do that, you then listed all 01:42:02  
24 these other trees and plants in the right of way that 01:42:06  
25 you planted. But maybe I misunderstood you? 01:42:10

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1 A. Well, maybe the progression. 01:42:12  
2 Q. Okay. 01:42:13  
3 A. I obtained the survey in the early 2000s. At 01:42:14  
4 that point, for the first time, we realize that there 01:42:18  
5 was a right of way on which a number of trees existed, 01:42:20  
6 including the Italian stone pine tree. So when I talked 01:42:23  
7 to the Public Works folks, at that point, I realized for 01:42:28  
8 the first time that these trees were on their right of 01:42:34  
9 way, and I mentioned it. But as I said before, we 01:42:37  
10 didn't plant any of them other than the Italian stone 01:42:39  
11 pine tree. 01:42:44  
12 Q. Now, earlier, when I asked you to point out the 01:42:44  
13 landscaping that existed when you bought the property, 01:42:47  
14 you didn't mention the melaleuca, the cotoneaster, the 01:42:50  
15 privet or the red-flowering gum eucalyptus. 01:42:55  
16 A. I thought I did. I recall saying that. 01:42:57  
17 MR. CORDOVA: Also, the question was directed 01:43:00  
18 to the Clock property, not the Town property. So I 01:43:03  
19 don't recall you asking specifically about landscaping 01:43:06  
20 that existed on the Town property. 01:43:08  
21 THE WITNESS: It would be in the record. But I 01:43:11  
22 do remember saying that to you. 01:43:13  
23 MS. BONAPART: Q. When you found out that the 01:43:14  
24 Italian stone pine was on Town property instead of on 01:43:18  
25 your own, did you apply retroactively for a permit? 01:43:24

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1 A. No, because I wasn't -- no. 01:43:40  
2 Q. Any particular reason why not? 01:43:45  
3 A. I never applied for a permit to plant any tree 01:43:49  
4 other than the ones that are required by the Town. 01:43:52  
5 Q. Is it your belief that a permit is not required 01:43:56  
6 to plant trees on Town property? 01:44:04  
7 A. Unknown. 01:44:07  
8 Q. You just don't one way or the other. 01:44:10  
9 A. I don't know one way or the other. But it's 01:44:11  
10 never come up in any conversation I've had with Public 01:44:14  
11 Works since. 01:44:21  
12 Q. So you've had conversations with 01:44:21  
13 representatives from the Public Works Department 01:44:26  
14 regarding the planting of the Italian stone pine since 01:44:28  
15 these initial conversations in the street? 01:44:32  
16 A. Following -- following the mediation, I believe 01:44:34  
17 it was, in January, yes, I've had -- I had both a 01:44:42  
18 meeting and conversations with Town officials. One was 01:44:47  
19 Public Works. 01:44:52  
20 The other one was something else. I can't 01:44:53  
21 remember which department he was actually in. Both of 01:44:55  
22 them told me that they didn't care what we planted. 01:44:57  
23 They weren't going to spend any money to do anything 01:45:00  
24 about it because it wasn't in their budget. 01:45:05  
25 And as far as they were concerned, we could do 01:45:05

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1 whatever we wanted. 01:45:08  
2 Q. Who was the person in Public Works who gave you 01:45:09  
3 all this information? 01:45:11  
4 A. I don't remember his name. 01:45:12  
5 Q. How did the subject come up? 01:45:19  
6 A. I raised it. 01:45:23  
7 Q. Why? 01:45:26  
8 A. Because it was an issue in the mediation that 01:45:27  
9 these trees were exempt trees from the Tiburon 01:45:30  
10 ordinances. And the whole issue, which I think you 01:45:33  
11 raised, was we would like to apply to cut them down or 01:45:36  
12 prune them or something, but we're going to need the 01:45:40  
13 towns approval and possibly yours. 01:45:44  
14 So I wanted to follow up on that line of 01:45:47  
15 thinking and find out what the town's position was. 01:45:50  
16 Q. And you told the Town that you were the one who 01:45:54  
17 planted the Italian stone pine tree, and they said, 01:45:56  
18 "That's perfectly fine with us. We don't care. You 01:45:59  
19 don't need a permit?" 01:46:02  
20 A. Well, that was a conversation I had in the 01:46:03  
21 early 2000s, not 2014 or 2015, no. It was just, all of 01:46:05  
22 these trees on your property. I didn't mention them by 01:46:10  
23 name, maybe. 01:46:13  
24 Q. Okay. So to this date, have you told anyone at 01:46:14  
25 the Town or Tiburon that you were the one who planted 01:46:17

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1 the Italian stone pine? 01:46:20  
2 A. Yes. 01:46:22  
3 Q. Who? 01:46:23  
4 A. I told you, in early 2000s, the people who were 01:46:24  
5 painting the curb red in front of the tree -- 01:46:26  
6 Q. Okay. Besides the workers painting the curb, 01:46:28  
7 have you told any Town official that you planted a tree 01:46:31  
8 on the town's property? 01:46:35  
9 A. I don't think so. Because they said they 01:46:37  
10 didn't care. 01:46:44  
11 Q. Because the guys painting the curb said they 01:46:45  
12 didn't care. 01:46:49  
13 A. No. The people later and this year after the 01:46:59  
14 mediation, they're the ones who said that. 01:46:53  
15 Q. After you told them that you planted the 01:46:56  
16 Italian stone pine, they said, "We don't care that you 01:47:00  
17 planted a tree on public property"? 01:47:02  
18 A. It wasn't quite that way. 01:47:04  
19 Q. Okay. Tell me how it was. 01:47:08  
20 A. I think I already did. But I'll say it again. 01:47:09  
21 I said, "By the way, we have discovered that there are a 01:47:11  
22 number of trees on the right of way that we have planted 01:47:14  
23 and maintained for 35 years -- excuse me, not planted 01:47:18  
24 and maintained. In some cases, we didn't plant them; 01:47:24  
25 we inherited them. But in one case or two, we planted 01:47:28

1 them? 01:47:31  
2 And they said -- and I probably gave the names 01:47:32  
3 of those trees, yes, this is a lengthy phone 01:47:34  
4 conversation that I had. And -- It's okay. We're not 01:47:37  
5 going to do anything about it. We don't have a budget 01:47:41  
6 to take care of those trees. We're glad you're pruning 01:47:43  
7 them and taking care of them." 01:47:46  
8 Q. Okay. Who did you have this lengthy 01:47:48  
9 conversation with? 01:47:51  
10 A. You just asked me. I said I can't remember his 01:47:51  
11 name. 01:47:54  
12 Q. Okay. What department was he in? 01:47:54  
13 A. One of the people was in Public Works. The 01:47:57  
14 other was in a different department. 01:48:00  
15 Q. What department? 01:48:01  
16 A. Don't remember. Don't remember. It's -- 01:48:03  
17 Q. Planning, building, city council? 01:48:10  
18 MR. CORDOVA: Counsel, if he testified he 01:48:15  
19 doesn't remember, he doesn't remember. 01:48:18  
20 MS. BONAPART: I'm just trying to jog his 01:48:20  
21 memory. 01:48:23  
22 THE WITNESS: I would tell you if I remembered, 01:48:23  
23 but I don't. 01:48:25  
24 MS. BONAPART: Q. Okay. Several of your 01:48:28  
25 correspondence mentioned multiple conversations with Dan 01:48:28

1 Watrous. Was it Dan Watrous? 01:48:30  
2 A. No. 01:48:32  
3 Q. How do you know? 01:48:33  
4 A. Because I know Dan Watrous. 01:48:33  
5 Q. Okay. Did you ever have a conversation with 01:48:35  
6 Dan Watrous about having planted a tree on Tiburon Town 01:48:37  
7 property? 01:48:40  
8 A. No, not that I recall. 01:48:41  
9 Q. I know you said you didn't plant the 01:48:51  
10 red-flowering gum eucalyptus, but do you know who did? 01:48:55  
11 A. No, we planted it. 01:49:01  
12 Q. Oh, I'm sorry. Okay. So you planted the 01:49:03  
13 Italian stone pine. You planted the red-flowering gum 01:49:05  
14 eucalyptus, correct? 01:49:08  
15 A. Much, much later, yes. 01:49:08  
16 Q. Okay. When was that? 01:49:09  
17 A. Approximately six years ago. We planted six of 01:49:11  
18 them on our property. 01:49:14  
19 Q. Okay. I'm talking about the one in the right 01:49:16  
20 of way. 01:49:21  
21 A. Right. Mrs. Hariri can't see the other five, 01:49:21  
22 so she wouldn't know. But that's the one that's in the 01:49:24  
23 right of way. 01:49:27  
24 Q. Okay. And six years ago was after the 01:49:27  
25 Oberkamper survey; right? 01:49:31

1 A. Yes. M-hm. 01:49:34  
2 Q. So when you planted the red-flowering gum 01:49:34  
3 eucalyptus in the right of way, you knew you were 01:49:38  
4 planting it on Town property? 01:49:39  
5 A. That's correct. 01:49:41  
6 Q. But you thought it would be okay because the 01:49:42  
7 Italian stone pine didn't seem to be a problem. 01:49:45  
8 A. No one had ever said not to do it. 01:49:47  
9 Q. Okay. 01:49:47  
10 A. And the town is up there every day. 01:49:49  
11 practically, driving around. 01:49:52  
12 Q. Have you ever notified any official that you 01:49:53  
13 planted a red-flowering gum eucalyptus on their 01:49:56  
14 property, other than the guys painting the curb? 01:49:59  
15 A. No. In early 2015, following our mediation, I 01:50:01  
16 told you I had those two conversations, and yes, I 01:50:08  
17 mentioned the trees by name. 01:50:11  
18 Q. Okay. So you mentioned the Italian stone pine 01:50:13  
19 and what did you call the eucalyptus? 01:50:15  
20 A. A red coral flowering eucalyptus. I gave the 01:50:21  
21 Latin name. 01:50:26  
22 Hold on a minute. I don't speak Latin. 01:50:27  
23 Q. Okay. You brought a book with you? 01:50:34  
24 A. This is the official Sunset Western Garden 01:50:36  
25 Book -- 01:50:39

1 Q. Okay. 01:50:39  
2 A. -- that's mentioned in the ordinances of the 01:50:40  
3 Town of Tiburon. 01:50:42  
4 Q. When did you get this book? 01:50:43  
5 A. Just one second. 01:50:44  
6 (Reviewing document.) It's called 01:51:18  
7 eucalyptus -- I'll spell the second name, 01:51:20  
8 f-i-c-i-f-o-l-i-a. 01:51:28  
9 Q. Eucalyptus ficifolia. 01:51:30  
10 A. Yeah, that's it. 01:51:31  
11 Q. M-hm. So when you had this conversation with 01:51:33  
12 the Town of Tiburon, you said, "By the way, I've planted 01:51:36  
13 an Italian stone pine and a eucalyptus ficifolia?" 01:51:38  
14 A. Right. 01:51:42  
15 Q. And they said, "Sounds good to me?" 01:51:44  
16 A. They didn't say anything like that. They said, 01:51:48  
17 "We don't care what you plant as long as you maintain 01:51:49  
18 it. We don't have a budget to do anything with it." 01:51:52  
19 And I got the book about a year ago after you 01:51:55  
20 filed the lawsuit against us. 01:51:57  
21 Q. Did you ever mention to Dan Watrous that you 01:51:58  
22 planted a eucalyptus ficifolia on Town property? 01:52:00  
23 A. No. My conversations with Dan Watrous and his 01:52:00  
24 supervisor, Anderson, have all related to the ordinances 01:52:03  
25 and what's in them and what they mean. 01:52:16

1 Q. Do you think there's anything in the ordinance 01:52:19  
2 and what's in them and what they mean that applies to 01:52:25  
3 planting undesirable species on Town property? 01:52:28  
4 MR. CORDOVA: Objection. Calls for a legal 01:52:28  
5 conclusion. Argumentative the way it's worded. And 01:52:30  
6 it's calling for opinion testimony. 01:52:35  
7 MS. BONAPART: Q. Was your answer yes? 01:54:10  
8 MR. CORDOVA: I'm going to instruct the witness 01:52:37  
9 not to answer that question. He's here as a percipient 01:52:38  
10 witness, not an expert. Your question calls for an 01:52:43  
11 opinion. 01:52:46  
12 MS. BONAPART: Okay. He just said he was 01:52:46  
13 talking with Dan Watrous and Scott Anderson about things 01:52:49  
14 that were in the ordinance, so I was asking him if he 01:52:53  
15 thought this thing was in the ordinance. And he said 01:52:55  
16 yes. 01:52:57  
17 MR. CORDOVA: Counsel, if you were to ask him 01:52:58  
18 what he said, you have the right to ask him what he 01:52:59  
19 said. Your question was: Do you have an opinion as to 01:53:02  
20 whether the ordinance applies to this particular set of 01:53:06  
21 facts? That's an opinion. And it's a legal opinion to 01:53:10  
22 boot. 01:53:14  
23 MS. BONAPART: Yes. He's co-counsel. 01:53:14  
24 MR. CORDOVA: And that is not going to be the 01:53:16  
25 subject of this deposition. 01:53:18

1 MS. BONAPART: He just associated in as 01:53:19  
2 counsel. 01:53:21  
3 MR. CORDOVA: You can ask me legal opinions, 01:53:22  
4 and I won't give them to you either. So if you want to 01:53:25  
5 go back and reread the question, that's fine. But my 01:53:29  
6 objection is on the record. I'm instructing the witness 01:53:32  
7 not to answer that. 01:53:34  
8 MS. BONAPART: Q. Was there any reason you 01:53:35  
9 thought it would not be relevant to mention to 01:53:42  
10 Mr. Watrous or Mr. Anderson that you had planted two 01:53:44  
11 trees on Town property when discussing with them their 01:53:50  
12 interpretation of the various ordinances at issue in 01:53:54  
13 this lawsuit? 01:53:58  
14 A. No. 01:53:59  
15 Q. Did it just slip your mind? 01:54:03  
16 A. No, no, no. My discussion -- 01:54:03  
17 THE WITNESS: You want me to answer? 01:54:05  
18 MR. CORDOVA: That question was argumentative. 01:54:06  
19 THE WITNESS: Okay. 01:54:08  
20 MS. BONAPART: Q. Why didn't you? 01:54:09  
21 A. My discussion was limited to the issues of view 01:54:11  
22 obstruction and what is primary living space and who the 01:54:16  
23 drafters of the ordinances were and the intent behind 01:54:21  
24 them. 01:54:25  
25 Q. M-hm. And what were you told with regard to 01:54:26

1 who drafted the ordinance -- 01:54:28  
2 A. Different things by different people. 01:54:31  
3 Q. Okay. I'm just talking about your 01:54:33  
4 conversations with Mr. Watrous and Mr. Anderson. 01:54:34  
5 A. They claimed that they had drafted them. 01:54:36  
6 Q. So Mr. Watrous and Mr. Anderson said, "We, 01:54:38  
7 Scott and Dan, drafted the view ordinance"? 01:54:45  
8 A. Pretty much, yeah. 01:54:48  
9 Q. Were they in the meeting together when they 01:54:49  
10 said this? 01:54:52  
11 A. No. 01:54:52  
12 Q. So Scott said, "Dan and I drafted the 01:54:53  
13 ordinance," and Dan said, "Scott and I drafted the 01:54:58  
14 ordinance"? 01:54:58  
15 A. Watrous said he drafted it, and Anderson said 01:54:58  
16 he drafted it. And Ragghianti said he drafted it. 01:55:03  
17 Q. Who do you believe? 01:55:08  
18 A. And my friend Jim Malott said he drafted it, 01:55:10  
19 another architect. So I've got four opinions. 01:55:17  
20 Q. And when you asked their opinions on what 01:55:20  
21 constituted primary living space, what did Mr. Watrous 01:55:32  
22 tell you was his opinion? 01:55:38  
23 A. Well, I think both of them answered the same 01:55:39  
24 way, and I had -- 01:55:43  
25 MR. CORDOVA: The question was: What did 01:55:46

EXHIBIT "H"

EXHIBIT NO. 4  
P. 24 OF 26



**BONAPART & ASSOCIATES**  
Law and Mediation

Barri Kaplan Bonapart, Esq.

Marina Office Plaza  
2330 Marinship Way, Suite 302  
Sausalito, CA 94965

Phone: (415) 332-3313  
Facsimile: (415) 332-4603

April 1, 2014

Nancy and Edwin Clock  
150 Avenida Miraflores  
Tiburon, CA 94920

*Re: View Obstruction Claim of the Owner of 163 Avenida Miraflores*

Dear Mr. and Mrs. Clock:

This firm represents your neighbor, Firuze Hariri, regarding the increased obstruction of her views by your trees and vegetation. As you know, Ms. Hariri has attempted to enter into good faith negotiations regarding the problem. Your response has been to label her concerns "unmeritorious and contrived." As a specialist in tree and view disputes, I have been retained to assist in achieving a long term resolution to this matter in the hopes of avoiding future discomfort or disagreement.

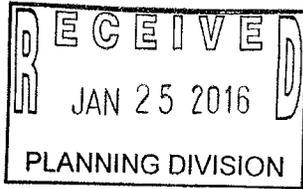
**FACTS**

Ms. Hariri purchased her home in 1979. She lived there continuously until 2003 when she rented it out. She then moved back approximately seven years ago. During her tenure, she enjoyed relatively unobstructed views south and southeast of San Francisco, Belvedere Island, Alcatraz Island, Richardson Bay, Marin Peninsula, and the Golden Gate Bridge. This view added substantially to the beauty and value of the property and was the key factor why she purchased her home. Some of these views are rapidly becoming obstructed from various rooms in her home as a result of the unchecked growth on your property.

You purchased your home a few years after Ms. Hariri. In pursuing approval for a major remodel of your property which changed the building footprint and raised the elevation of the roofline, you became embroiled in a legal battle with several of your neighbors, including the Hariris, and the Town. As a condition of withdrawing an appeal of your project's approval, you agreed to "not install or maintain any additional landscaping which would further impair any marine views from the real property located at 163 and 165 Avenida Miraflores, Tiburon, California."

In addition, the landscape plan submitted with your application for design approval shows a limited number of shrubs and trees with plants designated for maximum allowed heights. The plant selection and layout appears specifically designed to maintain specific view corridors from the Hariri residence.

Last year, Ms. Hariri attempted to resolve the matter informally. She provided you with photographs and an invitation to resolve the matter as neighbors. You responded to her refusing to address her concerns. You stated as your justification that she had not been the legal owner until recently following a legal battle with her sister; that none of the landscaping concerns "trees" for purposes of the Town's view ordinance; that you are in compliance with your planting plans approved



**TOWN OF TIBURON**  
 COMMUNITY DEVELOPMENT DEPARTMENT  
 1505 Tiburon Boulevard  
 Tiburon, CA 94920  
 Planning Division (415) 435- 7390 (T) (415) 435-2438 (F)  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

**TREE PERMIT APPLICATION**

Address: Public Right of Way on Avenida Miraflores adjacent to 150 Avenida Miraflores

Assessor's Parcel Number: 039-111-09 Zoning: \_\_\_\_\_

Number of trees to be removed: Two: Italian Stone Pine (1), and Cajeput ( Numbers) refer to those  
 shown on Exhibit B attached hereto showing the location of said trees on the partial survey

Species of trees: — of the public right of way and 150 Avenida Miraflores. \_\_\_\_\_

Size of trees (circumference in inches): Italian Stone Pine 48.2 inches and Cajeput 32.1 inches

Reasons for trees to be removed or altered: See Exhibit A for Reasons for removal

(Attach a completed **Land Development Application Form** and site plan along with separate sheets as necessary)

Applicant has requested that the Clocks either remove or trim these trees so that they do not unreasonably interfere with her historic views. The Clocks have refused to trim or remove these trees.

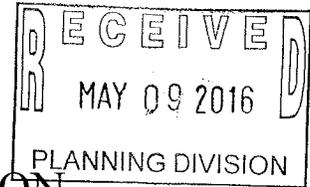
**Office Use Only**

File Number: 2016001

Date Received: 1/25/16

EXHIBIT NO. 4

P. 26 of 26



# TOWN OF TIBURON LAND DEVELOPMENT APPLICATION

## TYPE OF APPLICATION

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Conditional Use Permit   | <input type="checkbox"/> Design Review (DRB)         | <input type="checkbox"/> Tentative Subdivision Map                      |
| <input type="checkbox"/> Precise Development Plan | <input type="checkbox"/> Design Review (Staff Level) | <input type="checkbox"/> Final Subdivision Map                          |
| <input type="checkbox"/> Secondary Dwelling Unit  | <input type="checkbox"/> Variance(s) _____ #         | <input type="checkbox"/> Parcel Map                                     |
| <input type="checkbox"/> Zoning Text Amendment    | <input type="checkbox"/> Floor Area Exception        | <input type="checkbox"/> Lot Line Adjustment                            |
| <input type="checkbox"/> Rezoning or Prezoning    | <input type="checkbox"/> Tidelands Permit            | <input type="checkbox"/> Condominium Use Permit                         |
| <input type="checkbox"/> General Plan Amendment   | <input type="checkbox"/> Sign Permit                 | <input type="checkbox"/> Certificate of Compliance                      |
| <input type="checkbox"/> Change of Address        | <input checked="" type="checkbox"/> Tree Permit      | <input checked="" type="checkbox"/> Other <u>Approve Existing Flora</u> |

## APPLICANT REQUIRED INFORMATION

SITE ADDRESS: 150 Avenida Mira Flores PROPERTY SIZE: 0.5 acre  
 PARCEL NUMBER: 039-111-09 ZONING: \_\_\_\_\_

PROPERTY OWNER: Edwin H. Clock + Nancy M. Clock  
 MAILING ADDRESS: 150 Ave. Mira Flores, Tiburon, CA 94920-1440  
 PHONE/FAX NUMBER: 415-435-8879 E-MAIL: \_\_\_\_\_

APPLICANT (Other than Property Owner): Same as Above  
 MAILING ADDRESS: \_\_\_\_\_  
 PHONE/FAX NUMBER: N/A E-MAIL: \_\_\_\_\_

ARCHITECT/DESIGNER/ENGINEER Not Applicable  
 MAILING ADDRESS: \_\_\_\_\_  
 PHONE/FAX NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

*Please indicate with an asterisk (\*) persons to whom Town correspondence should be sent.*

BRIEF DESCRIPTION OF PROPOSED PROJECT (attach separate sheet if needed): \_\_\_\_\_  
 \_\_\_\_\_  
See Attached Documents  
 \_\_\_\_\_  
 \_\_\_\_\_

I, the undersigned owner (or authorized agent) of the property herein described, hereby make application for approval of the plans submitted and made a part of this application in accordance with the provisions of the Town Municipal Code, and I hereby certify that the information given is true and correct to the best of my knowledge and belief.

EXHIBIT NO. 5  
 P. 1057

I understand that the requested approval is for my benefit (or that of my principal). Therefore, if the Town grants the approval, with or without conditions, and that action is challenged by a third party, I will be responsible for defending against this challenge. I therefore agree to accept this responsibility for defense at the request of the Town and also agree to defend, indemnify and hold the Town harmless from any costs, claims or liabilities arising from the approval, including, without limitation, any award of attorney's fees that might result from the third party challenge.

Signature: Edwin H. Clock Nancy M. Clock Date: 5/7/16

*\*If other than owner, must have an authorization letter from the owner or evidence of de facto control of the property or premises for purposes of filing this application*

**DO NOT WRITE BELOW THIS LINE**

DEPARTMENTAL PROCESSING INFORMATION		
Application No.: TREE2016-017	GP Designation:	Fee Deposit: \$520 (ATF)
Date Received: 5/19/2016	Received By: LS	Receipt #: R1149
Date Deemed Complete: 6/7/16	Action: DENIED	By: <u>DeJ</u>
Acting Body: STAFF		Date: 2/26/16
Conditions of Approval or Comments: _____		Resolution or Ordinance # _____

**NOTICE TO APPLICANTS**

Pursuant to California Government Code Section 65945, applicants may request to receive notice from the Town of Tiburon of any general (non-parcel-specific), proposals to adopt or amend the General Plan, Zoning Ordinance, Specific Plans, or an ordinance affecting building or grading permits.

If you wish to receive such notice, then you may make a written request to the Director of Community Development to be included on a mailing list for such purposes, and must specify which types of proposals you wish to receive notice upon. The written request must also specify the length of time you wish to receive such notices (s), and you must provide to the Town a supply of stamped, self-addressed envelopes to facilitate notification. Applicants shall be responsible for maintaining the supply of such envelopes to the Town for the duration of the time period requested for receiving such notices.

The notice will also provide the status of the proposal and the date of any public hearings thereon which have been set. The Town will determine whether a proposal is reasonably related to your pending application, and send the notice on that basis.

Such notice shall be updated at least every six weeks unless there is no change to the contents of the notice that would reasonably affect your application.

Requests should be mailed to:

Town of Tiburon  
Community Development Department  
Planning Division  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
(415) 435-7390 (Tel) (415) 435-2438(Fax)  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

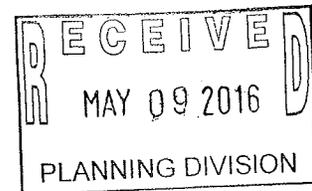
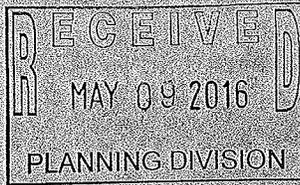


EXHIBIT NO. 5  
P. 201-7



TOWN OF TIBURON  
COMMUNITY DEVELOPMENT DEPARTMENT  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
Planning Division (415) 435-7390 (T) (415) 435-2438 (F)  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

TREE PERMIT APPLICATION

Address: 150 Avenida Mra Flores, Tiburon 94920

Assessor's Parcel Number: 039-111-09 Zoning: \_\_\_\_\_

Number of trees to be ~~removed~~ <sup>approved:</sup> Four (4) different species, all existing + planted prior to 2001.

Species of trees: See Attached

Size of trees (circumference in inches): See Attached

Reasons for trees to be removed or altered: See Attached

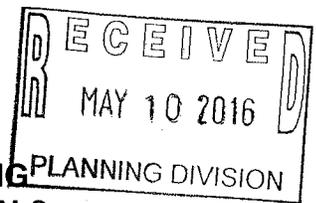
(Attach a completed Land Development Application Form and site plan along with separate sheets as necessary)

Office Use Only

File Number: TREE2016-017

Date Received: 5/9/2016

EXHIBIT NO. 5  
P. 3087



**REVISED APPLICATION FOR PERMIT TO RETAIN CERTAIN EXISTING LANDSCAPING SITUATED AT 150 AVENIDA MIRAFLORES, TIBURON & INSTALLED PRIOR TO ANY TOWN PERMIT REQUIREMENTS**

This Application seeks one or more permits from the Town of Tiburon, pursuant to Tiburon Municipal Code, Chapter 15A: Trees, Section 15A-3(c). Although the above-cited ordinance (hereafter, Tree Ordinance) did not become effective until March 2001 -- and most all of the landscaping in question was planted in 1978-80 -- we nevertheless seek the Town's approval to retain and maintain the following flora:

1. Three (3) **cotoneaster glaucophyllus**, which stand no more than 9.2 feet in height (see attached Tree Survey performed in January 2016 by Civil Engineer and Licensed Land Surveyor Lawrence Doyle) with trunk circumferences of 10, 11 and 12 inches, respectively, when measured at 24 inches above the ground surface. These three cotoneaster were planted in 1978-79 as part of the original landscaping of APN 039-111-09 by the general contractor (Clarence Whitbeck), the landscape architect (Grant Giordani), with the approval of the Director of Community Development (Robert Hanna) and/or his staff members, and the original owner's representative (Nahid Kasra). It is located at the northwestern edge of 150 Avenida Miraflores and is described by The New Sunset Western Garden Book (4<sup>th</sup> edition, 2012) as an "evergreen...6-8 feet tall and broad, with gracefully arching branches clothed in gray-green foliage. Dense clusters of white flowers are followed by dark red berries." (page 267) Please refer to the inspection and approval reports filed by Tiburon Building Dept. for all extant landscaping in 2004 & 2005 and the January 2016 inspection by Deputy Public Works Director Joel Brewer, who approved the landscaping planted by us in the Town of Tiburon's right of way.

2. Two (2) **linguistrum japonicum, aka privet**, which stand no more than 10.2 feet in height (see attached Tree Survey performed in January 2016 by Civil Engineer and Licensed Land Surveyor Lawrence Doyle) with a trunk circumference significantly less than 20 inches when measured at 24 inches above the ground surface. These linguistrum were also planted in 1978-79 as part of the original landscaping of our property by general contractor Whitbeck and landscape architect Giordani, with the approval of Community Development Director Hanna and/or his staff members and the original owner's representative, Nahid Kasra. They are also located at the northwest edge of 150 Avenida Miraflores and described in Sunset Western Garden Book as "evergreen shrubs...to 10-12 feet tall, 8 feet wide, with dense, compact habit...Excellent for hedges, screens, and topiary. With lower limbs pruned off, also makes an attractive small standard tree." (page 411) Please refer to the inspection and approval reports filed by Tiburon Building Dept. for this landscaping in 2004 & 2005 and the January 2016 inspection by Deputy Public Works Director Joel Brewer, who approved the landscaping planted by us the Town of Tiburon's right of way.

EXHIBIT NO. 5

P. 4 OF 7

3. Three (3) **melaleuca quinquenervia, aka cajeput**, whose dimensions, height, and many other attributes are described in great detail in our prior Memoranda to Tiburon Planning Department dated March 1, 2016 and April 30, 2016, duplicate copies of which are attached to this Application for Permit(s). These likewise were planted in 1978-80 during the original development of 150 Avenida Miraflores by general contractor Whitbeck and landscape architect Giordan, with the approval of Community Development Director Hanna and/or his staff members, and the original owner's representative, Nahid Kasra. The three melaleuca are planted at the western edge of our property, along Francisco Vista Court, with Sunset Western Garden Book noting that such species make for "good street trees". (page 439) We note that the residence directly across the street from ours, at 8 Francisco Vista Court, planted within the last decade an identical maleleuca quinquenervia that is now approximately 25 feet in height. Please refer to inspection and approval reports filed by Tiburon Building Dept. in 2004 & 2005 and also the January 2016 inspection by Deputy Public Works Director Joel Brewer, who approved the landscaping planted by us in the Town's right of way.

4. One (1) **Italian Stone Pine**, whose dimensions, height, and many other attributes are described in great detail in our prior Memoranda to Tiburon Planning Department dated March 1, 2016 and April 30, 2016, duplicate copies of which are attached to this Application for Permit(s). This tree we planted ourselves in the mid-1990s with the consent of the only neighbor for which the tree was visible from a primary living area (Mr. and Mrs. Hariri of 163 Avenida Miraflores). This tree is the source of edible pine nuts (Sunset Western Garden Book, page 510) enjoyed by several species of birds and is an excellent source for our state's depleted numbers of pollinators during the summer and fall months. We have ensured that its height not exceed 18 feet at all times over the last 22 years and will undertake in the future to maintain a height of no more than 15-16 feet; it currently stands approximately 16 feet in height as set forth in Mr. Doyle's January 2016 Tree Survey. Please refer to inspection and approval reports filed by Tiburon Building Dept. in 2004 & 2005 and also the inspection in January 2016 by Deputy Public Works Director Joel Brewer, who approved the landscaping planted by us in the Town's right of way.

For all of the above landscaping, we employ on a regular, quarterly basis the services of Marin Tree Service of San Rafael; and also the regular services of consulting arborist Ray Moritz of Urban Forestry Associates of San Rafael.

It is our continuing belief that the maintenance and retention of each of the four (4) above-described flora advance, conform with, and further the Town's policy objectives

EXHIBIT NO. 5  
P. 5087

set forth in the Tree Ordinance, Section 15A-1 (a), (b) and (e), as follows: Shade-creating and privacy-creating benefits; soil stability, noise buffering, and wind protection benefits, and can help prevent erosion and debris flow landslides, particularly in the case of the Italian stone pine. In addition, ecological importance, visual enhancement, and residential privacy and quietness are furthered and advanced by the existence of this beautiful, ecologically-positive and extremely healthy tree that screens both headlamp and noise pollution for all residents of this neighborhood. (Policy #1, subsection (a)).

**The Italian stone pine is a “protected tree” as it is a recognized heritage tree and, as such, deserves to “be provided the permit protection afforded by [Chapter 15A: Trees generally].” (Policy #2, subsection (b))**

Although situated on the Town’s right of way, all four species described above were planted well prior to the permit requirements enacted for the first time by Town of Tiburon in the 2001 Tree Ordinance; and, at the time of planting, we believe that our predecessors and we acted responsibly and in furtherance of “the freedom to determine the nature of ...private landscaped surroundings.” (Policy #6, subsection (e))

Respectfully submitted,



EDWIN H. CLOCK



NANCY M. CLOCK

May 9, 2016, Revised Filing with Town of Tiburon

Attachments previously delivered to Town of Tiburon on March 1<sup>st</sup>, 2016; April 30<sup>th</sup>, 2016; and May 7<sup>th</sup>, 2016

EXHIBIT NO. 5

P. 6 of 7

150 AVENIDA MIRAFLORES, TIBURON, CA 94920

June 18, 2016



Daniel Watrous, Planning Manager, Town of Tiburon

1155 Tiburon Boulevard, Tiburon, CA 94920

Dear Mr. Watrous:

Please consider this letter as a first supplement to our Revised Application for Tree Permit, et al., dated and filed with your office on May 9, 2016.

First, we have reviewed the two ordinances mentioned in your May 24, 2016 letter, namely those dated 1967 and 1991, and believe that neither has any relevance or applicability to our Revised Application's request for the Permits to retain trees and non-trees planted in the period 1977-80 (numbered paragraphs 1-3 of our Application) for obvious reasons that the plantings of our landscape predated by more than one decade any applicable Town of Tiburon ordinance. As you stated, the 1967 ordinance dealt only with tree removal.

Second, the June 8, 2016 notice that you sent (copy attached) omitted reference to several of the trees and non-trees for which we seek a Permit, as requested by you, even though such is not required under any applicable ordinance. For example, Arborist Ray Moritz of Urban Forestry Associates of San Rafael on April 28, 2016 wrote an uncontested letter that confirms and documents three (3) separate melaleuca quinquenervia; and Dr. Moritz's inspection on June 17, 2016 documented at least three (3) separate cotoneaster glaucophyllus and two (2) separate lingustrum japonicum, aka privet, as stated and explained in our Revised Application dated May 9, 2016. Dr. Moritz's written and expert opinion confirming the above will be available within the next business week and will be made available to the Town of Tiburon. All such landscaping is being maintained in excellent health and disease-free, as Dr. Moritz has confirmed.

Third, as relates to the Italian stone pine, we are willing to have same removed at the sole expense of requesting party, Ms. Hariri, 163 Avenida Miraflores, Tiburon, CA provided she employs Marin Tree Service of San Rafael, a licensed arborist, and adheres to all arborist, State of California and other applicable standards as interpreted by Dr. Moritz. Our agreement to the removal of the Italian stone pine tree is contingent upon the Town's agreement to grant Permits for the above-referenced melaleuca, cotoneaster, and privets.

Very truly yours,

*E. H. Clock & N. M. Clock*

EDWIN H. CLOCK & NANCY M. CLOCK

EXHIBIT NO. 5

P. 7 OF 7



Town of Tiburon  
Planning Division (415) 435-7390  
www.ci.tiburon.ca.us

## TREE ORDINANCE

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### TIBURON MUNICIPAL CODE

#### CHAPTER 15A: TREES

Section 15A-1 Purpose and policy.

Section 15A-2 Definitions.

Section 15A-3 When a permit is required.

Section 15A-4 Exceptions from permit requirement.

Section 15A-5 Application filing and procedure.

Section 15A-6 Application review procedure.

Section 15A-7 Permit issuance.

Section 15A-8 Appeal.

Section 15A-9 Termination of permit.

Section 15A-10 Violation--Penalty.

EXHIBIT NO. 6  
P. 1098

## Section 15A-1 Purpose and Policy.

The Tiburon General Plan recognizes the importance of trees to the character and beauty of the Town, and recognizes the role that trees have in advancing the public health, safety and welfare. The Town has therefore determined that reasonable regulation of the removal, alteration, and planting of certain trees is necessary to promote the public health, safety and general welfare of the community. Regulation of trees is based upon the following general policies:

**(a) Policy #1.** The Town recognizes the scenic importance, shade-creating, and privacy-creating benefits of trees to the community. The Town also recognizes that trees can provide soil stability, noise buffering, and wind protection benefits, and can help prevent erosion and debris flow landslides on the hilly terrain which characterizes most of Tiburon. The Town of Tiburon greatly values its trees for their ecological importance, visual enhancement of the community, and their contribution to residential privacy and quietness.

**(b) Policy #2.** The Town recognizes the special significance of “protected trees” (heritage trees, oak trees, and dedicated trees), and values the contribution which such trees make to the beauty and quality of life of Tiburon. Any tree (including an “undesirable tree”) which has attained the size of trunk to qualify as a “heritage tree,” as defined in section 15A-2 will be provided the permit protection afforded by this chapter.

**(c) Policy #3.** The Town recognizes that certain types of trees, because of potential breakage and fire hazards, or their potential for creating view blockage due to rapid growth and tall height at maturity, should be prohibited from being planted without special permission. These trees are referred to as “undesirable trees.”

**(d) Policy #4.** The Town recognizes that because of the known benefits of trees, undeveloped properties and properties capable of further subdivision should be protected from unregulated removal of trees prior to the approval of development plans. Trees on such properties should be preserved so that they may be considered for incorporation into development plans.

**(e) Policy #5.** The Town recognizes that residents in single-family and two-family zones should have the freedom to determine the nature of their private landscaped surroundings. In such zones, only the removal or alteration of “protected trees” and the planting of “undesirable trees” shall require permits.

**(f) Policy #6.** The Town recognizes that properties located in zones other than single-family and two-family residential zones often have special landscaping circumstances, including commonly-owned or shared areas, and these special circumstances have the potential to affect significantly larger numbers of persons and properties if unregulated. Because of the potential for special landscaping circumstances, such properties require careful regulation. Therefore, all trees on such properties should be subject to reasonable regulation through the permit process. (Ord. No. 359 N.S., § 4 (part); Ord. No. 419 N.S., § 2(A), (B))

## 15A-2 Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings ascribed to them:

**“Alteration”** means any action which would significantly damage the health or appearance of any tree, whether by:

- (1) Cutting of its trunk or branches;
- (2) Filling or surfacing or changing the drainage of the soil within the drip-line of the tree;  
or
- (3) Performing other damaging acts.

This definition does not include routine pruning and shaping, removal of dead wood, or other maintenance of a tree (including a protected tree) to improve its health, facilitate its growth or maintain its configuration to protect an existing view.

**“Design Review Board”** means the Tiburon Design Review Board or its successor.

**“Person”** means any individual, corporation, partnership, firm or other legal entity, including the Town.

**“Planning Director”** means the Planning Director of the Town or his designee.

**“Planting”** means the intentional installation or placement of a tree.

**“Property”** means any land or area within the corporate limits of the Town of Tiburon which is subject to its regulatory authority.

**“Protected Tree”** means any:

- (1) Heritage Tree, meaning any tree which has a trunk with a circumference exceeding sixty inches, measured twenty-four inches above the ground level.
- (2) Oak Tree, including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak or valley oak tree.
- (3) Dedicated Tree, meaning a tree of special significance so designated by resolution of the Town Council.

**“Removal”** means the elimination, movement, or taking away of any tree from its present location.

**“Shrub”** means a woody perennial plant smaller than a tree, usually having permanent stems branching from or near the ground.

**“Single-Family Residential Zone”** means any property located in a zone for which the principal use is detached single-family residential. Typically, this means the R-1, R-1-BA, RO or RPD zone as shown on the Tiburon zoning map.

**“Town Property”** means any property owned in fee by the Town of Tiburon, or any easements, rights-of-way or other similar interests of the Town in property.

**“Tree”** means:

(1) A woody perennial plant that has a trunk circumference of twenty inches measured at twenty-four inches above the ground surface; or

(2) A woody perennial plant at least fifteen feet in height that usually, but not necessarily, has a single trunk.

In applying subsection (1) above, for trees with more than one trunk, the circumference measurement shall be ascertained from a single measurement around the outside perimeter of all trunks and shall not be calculated as the sum total of the circumferences of the individual trunks.

References to “tree” shall include the plural. The Planning Director or his designee shall have reasonable discretion to distinguish between a “tree” and a “shrub” within the confines of the definitions found in this chapter.

**“Two-Family Residential Zone”** means a property located in a zone for which the principal use is two-family or duplex residential. Typically, this means the R-2 zone as shown on the Tiburon zoning map.

**“Undesirable Tree”** means a Blue Gum Eucalyptus, Monterey Pine, Monterey Cypress, Coast Redwood, or any other species of tree (regardless of its height or trunk circumference) that generally grows more than three feet per year in height and is capable of reaching a height of over thirty-five feet at maturity. An “undesirable tree” nevertheless constitutes a “protected tree” if it meets the criteria set forth in that definition.

Tree height at maturity and tree growth rate shall be determined using a recent edition of the Sunset Western Garden Book. Trees characterized as having a “fast growth” rate in the Western Garden Book shall be conclusively presumed to grow at least three feet in height per year. Trees characterized as having a “moderate to fast growth” rate in the Western Garden Book shall be conclusively presumed to grow less than three feet in height per year. If the necessary information on height and growth rate is not available in the Western Garden Book, then other information sources may be substituted in the reasonable discretion of the Planning Director.

Applicants may submit additional written information from other published sources that may be used in the Planning Director's reasonable discretion to make necessary determinations for tree height at maturity and tree growth rate.

**“Undeveloped Property”** means any property which:

(1) Is not improved with a primary building (for example, a dwelling unit or place of

business); or

(2) Is improved with a primary building, but is of sufficient land area that it could be subdivided. Subdivision potential shall be based upon the minimum lot area requirement for the zone in which the property is located. (Refer to Tiburon zoning ordinance for minimum lot areas in each zone). (Ord. No. 359 N.S., § 4 (part); Ord. No. 419 N.S., § 2(C), (D); Ord. No. 461 N.S., § 3)

### **15A-3 When a Permit is Required.**

The planting, removal or alteration of the following trees is regulated by this chapter and shall require a permit:

(a) Protected Tree. Removal or alteration of any “protected tree” on any property is prohibited without the prior issuance of a permit.

(b) Undesirable Tree. Planting of any “undesirable tree” on any property is prohibited without the prior issuance of a permit.

(c) Town Property. Planting, removal or alteration of any tree on “Town property” is prohibited without the prior issuance of a permit, except that in cases of Town action on Town property, only the removal or alteration of a “protected tree” or the planting of an “undesirable tree” shall require a permit.

(d) Undeveloped Property. Removal or alteration of any tree on “undeveloped property,” including property which could be subdivided, is prohibited without the prior issuance of a permit.

(e) Single-Family or Two-Family-Residential Zones. Removal or alteration of any “protected tree” or the planting of any “undesirable tree” is prohibited without the prior issuance of a permit.

(f) All Other Zones. Removal or alteration of any tree located in a zone other than a “single-family residential zone” or a “two-family residential zone” is prohibited without the prior issuance of a permit. (Ord. No. 359 N.S., § 4 (part))

### **15A-4 Exceptions from Permit Requirement.**

(a) A permit shall not be required under this chapter if the planting, alteration or removal of a tree has been authorized by a zoning, subdivision or other valid permit issued by the Town. The burden shall be on the applicant to demonstrate such approval.

(b) If personal injury or property damage is imminently threatened, or the fire marshal declares a tree to be a fire hazard, the chief of police, superintendent of public works, Planning Director, or Town manager may authorize or order the removal or alteration of a tree without compliance with other provisions of this chapter. The removal or alteration carried out in such emergency conditions shall be reported to the Planning Director on the first business day following the work. (Ord. No. 359 N.S., § 4 (part))

### **15A-5 Application Filing and Procedure.**

(a) Any person wishing to plant, remove, or alter a tree regulated by this chapter shall apply in writing to the Planning Director for a permit. Application forms are available in the planning department. The fee for such application shall be established by resolution of the Town Council. Applications filed with the Planning Director shall:

- (1) Identify the property on which the tree is located.
- (2) Provide a perimeter outline of any existing or proposed buildings on the property.
- (3) Specify the location of the tree within reasonable accuracy to facilitate easy identification.
- (4) State the species of the tree, the approximate height of the tree (currently and at eventual maturity), and the circumference of the trunk measured at twenty-four inches above the ground surface.
- (5) Furnish a statement of the reason for the request.
- (6) Provide evidence, in writing, of property owner permission.

(b) The Planning Director may require additional information to secure the purposes of this chapter, including a report by a certified arborist satisfactory to the Town, and/or a tree inventory of the subject property, when reasonably necessary to make a final determination. The cost of any such report or additional information shall be responsibility of the applicant. (Ord. No. 359 N.S., § 4 (part); Ord. No. 419 N.S., § 2(E))

#### **15A-6 Application Review Procedure.**

(a) Once the Planning Director determines that the application is complete, he should cause to be mailed "courtesy" notices to all owners of property, as listed on the available county assessment rolls, within three hundred feet of the subject property, and to residents and other parties, including homeowners associations, which in the discretion of the director, may be significantly affected. The notice should briefly describe the proposed work to be performed. Courtesy notices should be mailed at least ten days prior to a decision by the director.

(b) On applications for planting an undesirable tree, the Planning Director shall within fifteen days inspect the site and shall consider the following factors in deciding whether, in the exercise of his discretion, to issue or deny the permit:

- (1) The suitability of the location for the tree requested to be planted;
- (2) The potential for unreasonable or undesirable view blockage by the tree at maturity.

(c) On applications for the alteration or removal of trees, the Planning Director shall within fifteen days inspect the trees and the site. The director shall then consider the following factors in deciding whether, in the exercise of his discretion, to issue or deny the permit:

- (1) The condition of the tree with respect to disease, hazard, proximity to existing or proposed structures or interference with utility services.

- (2) The necessity of removal or alteration of the tree in order to develop the property.
- (3) The topography of the land and the effect of tree removal or alteration on protection from wind, soil erosion or increased flow of surface water.
- (4) The number of trees in the neighborhood, and the effect of removal or alteration of the tree on the character of the neighborhood, including privacy impacts on neighboring properties.
- (5) Good forestry practices; i.e. the number of healthy trees that a given property will support.
- (6) The historical significance and age of the tree. (Ord. No. 359 N.S., § 4 (part); Ord. No. 419 N.S., § 2(F))

#### **15A-7 Permit Issuance.**

- (a) The Planning Director may issue the permit upon finding that it would be consistent with the purposes, policies and regulations set forth in this chapter. The Planning Director shall have the discretion to refer any application to the Design Review Board for hearing and action, and the board shall have all authority and discretion of the Planning Director, as set forth in this chapter, in acting on applications.
- (b) The Planning Director may attach such conditions to the permit as deemed necessary, in the exercise of his discretion, to accomplish the purposes of this chapter. Such conditions may include, but are not limited to, regulation of planting, cutting, grading, drainage, irrigation, encroachment into drip-line areas, paving and surfacing limitations, maintenance of trees at a maximum height, and erection of protective fencing. Replacement of removed trees, on a basis of up to three to one, may also be required as a condition of approval. Where appropriate, any conditions attached to a permit shall run with the land and apply to permittee's successors in interest. The Planning Director may direct that any permit shall be recorded with the Marin County recorder. (Ord. No. 359 N.S., § 4 (part); Ord. No. 419 N.S., § 2(G))

#### **15A-8 Appeal.**

- (a) The decision of the Planning Director may be appealed to the Design Review Board. A written appeal must be filed with the planning department within ten days of the decision.
- (b) No permit granted under the provisions of this chapter shall be effective until the expiration of ten days following the granting of such permit. If an appeal is filed, action under any permit shall be suspended pending the outcome of the appeal.
- (c) The Design Review Board shall hear the appeal within thirty days of its filing. Notice of the time and place of the appeal hearing shall be given to the applicant, appellant and other persons as deemed appropriate by the Planning Director. The Design Review Board may affirm, reverse or modify the decision of the Planning Director. The decision of the board shall be final. (Ord. No. 359 N.S., § 4 (part))

### **15A-9 Termination of Permit.**

Unless a longer time is set forth in the permit, a permit shall be valid for only one hundred eighty days from final approval, and thereafter shall become null and void. For good cause, time extensions may be granted in writing by the Planning Director. (Ord. No. 359 N.S., § 4 (part))

### **15A-10 Violation--Penalty.**

In addition to all other remedies available under this Code or state law, any violation of this chapter shall be subject to abatement as a public nuisance. All costs relating to the enforcement of this chapter shall be borne by and recoverable from the person in violation thereof. (Ord. No. 359 N.S., § 4 (part); Ord. No. 445, § 4)

*S:\Planning\Forms\Current Forms\Tree Ordinance Handout.doc*



April 20, 2016

Firuze Hariri  
163 Avenida Miraflores  
Tiburon, CA 94920

Dear Ms. Hariri:

The Tiburon Community Development Department Staff has considered your request for a permit for the removal of (1) Italian Stone Pine tree and one (1) Cajeput tree on Town of Tiburon right-of-way adjacent to property located at 150 Avenida Miraflores. One letter was received regarding your proposal. Based on a review of the application and a visit to the property, Staff finds that the request is consistent with the purposes, policies and regulations set forth in Chapter 15A of the Tiburon Municipal Code, and this application is hereby **approved**. The following factors were considered in making this finding:

- a. The subject trees are not in close proximity to the single-family dwelling on the site and do not provide substantial privacy or visual screening or wind protection for this dwelling.
- b. The removal of these trees will not interfere with future development for this property due to their location within the Town right-of-way beyond the property lines for the adjacent lot.
- c. The removal of these trees would not have an effect on the protection of the property from wind or soil erosion or increased surface water due to the relatively small size of the trees and relatively small sloped area in the vicinity of the trees.
- d. The removal of these trees would not significantly alter the character of the surrounding neighborhood, due to the remaining number of mature trees in the vicinity.
- e. The removal of these trees would not be inconsistent with good forestry practices.
- f. These particular trees do not have any historical significance; however, these trees are considered to be "Heritage Trees" due to their trunk size.

This decision may be appealed to the Design Review Board within ten days of this date. Appeal forms are available at Town Hall. The appeal fee is \$300.00.

**Pursuant to Section 15A-8 of the Tiburon Town Code, no work may be commenced under the terms of this permit until the expiration of the ten (10) day appeal period. The work authorized by this permit may commence on May 2, 2016 unless an appeal has been filed.**

Erin Tollini  
Mayor

Jim Fraser  
Vice Mayor

Frank X. Doyle  
Councilmember

Alice Fredericks  
Councilmember

Emmett O'Donnell  
Councilmember

Greg Chanis  
Town Manager



The following conditions of approval are hereby attached to this permit:

1. A copy of the enclosed Tree Permit Certificate must be posted on the site in a conspicuous place at all times during performance of work authorized by the permit.
2. Tree work authorized by this permit shall be performed during the hours of 7:00 a.m. to 5:00 p.m. on Monday through Friday, and 9:30 a.m. to 4:00 p.m. on Saturday. Only quiet work is allowed to be performed on Saturdays, such that noise from any source associated with the permitted work, including but not limited to vehicles, saws, chippers or other machinery, amplified sound, and worker's voices, shall not be plainly audible at the property line.
3. No work pursuant to this permit shall be performed on any Sunday or on holidays observed by the Town of Tiburon. These holidays are New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
4. A standard Public Works encroachment permit application shall be submitted and approved prior to removal of the trees. The public right-of-way shall be protected from damage during tree removal, or repairs shall be made to the satisfaction of the Tiburon Public Works Department.
5. The property owner/applicant shall not perform any work inconsistent with any order or judgment entered in *Firuze Hariri v. Edwin Clock, et al.*, Marin Superior Court Case Number CIV 1402371 or any related case.
6. The property owner/applicant shall indemnify, protect, defend, and hold harmless, the Town, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the Town, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by, the Town and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section



Tree Permit No. TREE2016001  
April 20, 2016  
Page 2

1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. The Town shall promptly notify the property owner/applicant of any Action brought and request that applicant defend the Town. It is expressly agreed that property owner/applicant may select legal counsel providing the property owner/applicant's defense and the Town shall have the right to approve separate legal counsel providing the Town's defense. The property owner/applicant shall reimburse the Town for any attorneys' fees, costs and expenses directly and necessarily incurred by the Town in the course of the defense. Property owner/applicant agrees that the Town will forward monthly invoices to property owner/applicant for attorneys' fees, costs and expenses the Town has incurred related to its defense of any Action and property owner/applicant agrees to timely payment within thirty (30) days of receipt of the invoice. Within fourteen (14) days of an Action being filed, property owner/applicant agrees to post adequate security or a cash deposit with the Town in an amount to cover the Town's estimated attorneys' fees, costs and expenses incurred by the Town in the course of the defense in order to ensure timely payment of the Town's invoices. The amount of the security or cash deposit shall be determined by the Town.

This permit shall be valid only for 180 days from final approval, and thereafter shall become null and void. For good cause, time extensions may be granted in writing by the Community Development Director.

If you have any questions on this matter, please contact me at (415) 435-7393.

Sincerely,

Dan Watrous  
Planning Manager

c: Edwin and Nancy Clock  
150 Avenida Miraflores  
Tiburon, CA 94920

Barri Kaplan Bonapart  
Bonapart & Associates  
Marina Office Plaza  
2330 Marinship Way, Suite 302

EXHIBIT NO. 7



Erin Tollini  
Mayor

Jim Fraser  
Vice Mayor

Frank X. Doyle  
Councilmember

Alice Fredericks  
Councilmember

Emmett O'Donnell  
Councilmember

Greg Chanis  
Town Manager

July 26, 2016

Edwin and Nancy Clock  
150 Avenida Miraflores  
Tiburon, CA 94920

SUBJECT: Tree Permit No. TREE2016017

Dear Mr. and Mrs. Clock:

The Tiburon Planning Division Staff has considered your request for a Tree Permit to permit the after-the-fact planting of one (1) Italian Stone Pine tree, one (1) Cajeput tree, one (1) Cotoneaster tree and one (1) Privet tree on Town of Tiburon right-of-way adjacent to property located at 150 Avenida Miraflores. No letters were received regarding this application.

Based on a review of the application and a visit to the property, Staff finds that the request is inconsistent with the purposes, policies and regulations set forth in Chapter 15A of the Tiburon Municipal Code, and this application for planting these trees is hereby **denied**. This finding was made based upon the potential for unreasonable or undesirable view blockage by the trees at maturity, as the trees currently extend into water views from the home at 163 Avenida Miraflores.

This decision is made without prejudice for you to withdraw the application, based upon your contention that the Tiburon Tree Ordinance in effect at the time the trees were planted did not require a Tree Permit to plant trees on a Town of Tiburon right-of-way.

This decision may be appealed to the Tiburon Design Review Board. An appeal must be filed with the Town of Tiburon no later than **5:30 p.m., Thursday, August 8, 2016.** Appeal forms are available at Town Hall. The appeal fee is \$500.00.

If you have any questions on this matter, please contact me at (415) 435-7393.

Sincerely,

Daniel M. Watrous  
Planning Manager

EXHIBIT NO. 8

ORIGINAL

TOWN COUNCIL  
TOWN OF TIBURON

RECEIVED

MAR 1 1983

TOWN OF TIBURON

WITHDRAWAL OF APPEAL AND MODIFICATION OF  
BOARD'S DECISION APPROVING BUILDING  
PERMIT AND VARIANCES  
FILE NUMBER 28216

We, the undersigned, Appellants in the above-numbered appeal from the Tiburon Board of Adjustments and Review decision of February 23, 1983, and Mr. and Mrs. Edwin H. Clock, 150 Avenida Miraflores, Tiburon, California, the Applicants and Respondents for the building permit and the variances set forth in the above-referenced file number, have reached an agreement to withdraw said appeal and to modify the request for building permit and variances based upon the following terms and conditions:

1. Mr. and Mrs. Clock shall modify the elevation of their proposed addition by lowering the roof line and ridge a further three feet (36 inches) from the maximum level indicated on the storey poles presently located at 150 Avenida Miraflores, Tiburon, California, and on the plans and specifications approved by the Board of Adjustments and Review, all as set forth in Exhibit "A" (sketch of Rene Cardinaux, Architect), attached hereto and incorporated herein by reference. It is understood that except as modified by Exhibit "A" and by this Withdrawal of Appeal agreement, the building permit and variances approved by the Board of Adjustments and Review should be affirmed by the Town Council.

2. Prior to the issuance of a building permit, Mr. and Mrs. Clock shall file with the Building Department, Town of Tiburon, a report issued by a civil engineer licensed by the State of California, verifying the above-mentioned height reduction with reference to the existing storey poles and the existing living room of the Clock residence.

3. During the course of construction at the point in time when the proposed addition has been framed out, Mr. and Mrs. Clock shall file with the Building Department, Town of Tiburon, a report issued by a civil engineer licensed by the State of California, verifying that construction of the addition is in conformance with the height requirements of Exhibit "A", a previously verified in said engineer's first report. In the event said construction does not conform to said height requirements, Mr. and Mrs. Clock shall cause

EXHIBIT NO. 9

P. 10F2

said construction to be altered so that it does conform to said requirements prior to completing said addition.

4. Based upon the above-mentioned modifications of the application for building permit and variances for set back and lot coverage, and the acceptance of same by the Town Council of the Town of Tiburon, the undersigned Appellants hereby withdraw their appeal of the grant of building permit and variances enacted by the Tiburon Board of Adjustments and Review on February 3, 1983, as to 150 Avenida Miraflores, and agree not to initiate or pursue any further proceedings or litigation concerning the matters herein contained.

5. Mr. and Mrs. Edwin Clock, Applicants and Respondents, hereby request that the grant of building permit and variances enacted by the Tiburon Board of Adjustments and Review on February 3, 1983, as to 150 Avenida Miraflores be affirmed by the Town Council but modified to include the changes herein described and as set forth in Exhibit "A" hereto.

6. Subject to approval of a landscape plan by the Town of Tiburon (Condition No. 3 of Staff Recommendation approved by the Tiburon Board of Adjustments and Review on February 3, 1983), Mr. and Mrs. Clock will not install or maintain any additional landscaping which would further impair any marine views from the real property located at 163 and 165 Avenida Miraflores, Tiburon, California.

DATED this 15<sup>th</sup> day of March, 1983.

APPELLANTS:

\_\_\_\_\_  
GEORGE HARMINA

*Farideh Hariqi*  
FARIDEH HARIQI

\_\_\_\_\_  
GERALDINE HARMINA

*Chester Judah*  
CHESTER JUDAH

*Margaret Spence*  
MARGARET SPENCE

*Greta Judah*  
GRETA JUDAH

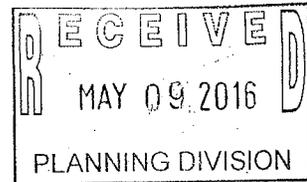
*Ayahollah Petri*  
AYAZOLLAH PETRI

APPLICANTS/RESPONDENTS:

*Edwin H. Clock*  
EDWIN H. CLOCK

*Nancy Clock*  
NANCY CLOCK

EXHIBIT NO. 9



To: Patti O'Brien, Tiburon Planning

From: Nancy Clock

Re: Landscape Plan for addition at 150 Avenida Miraflores

Date: June 17, 1983, revised

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In response to your inquiries regarding our landscape plan, I have tried to reach you by phone with no success and so I am answering your questions, etc. via this memo to expedite matters.

1. Melaleuca – variety name is nesophila.
2. Liquid Ambar – variety name is styraciflua.

Please note with respect to these two items, and which also is generally true with all plant varieties in on our South- and West-facing slopes in particular, heights given in the Sunset Western Garden Book are for optimal growing location, which is valley floor or bottom land. Most all of our property is hillside soil and very rocky, compact and presents much more difficult growing conditions than valley floor land, so we are advised by our two professionals as follows: both the established and newly planted melaleuca; the newly –to be planted – myoporum; the existing oleander and established echium will reach a height from trunk in the ground of about 8-12 feet from the vertical level at which they were and are being planted. This is consistent with the original (1977-78) landscaping plan and the current landscape plan, as noted.

3. Viburnum Odoratissimum is the correct spelling.
4. Tecomaria is the correct spelling.
5. Leptospermum and Diosma are two separate plant varieties, and we are intending to plant both; they appear next to each other on the Cardinaux landscape plan.

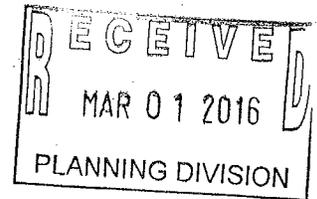
Cc: Rene Cardinaux, AIA

Ms. Tofer Delaney, landscape architect

EXHIBIT NO. 10

**150 AVENIDA MIRAFLORES  
TIBURON, CALIFORNIA 94920**

March 1, 1994



Dear Mr. and Mrs. Hariri, 163 Avenida Miraflores, Tiburon,

It was good to meet with you earlier this week, and we appreciated the exchange of your very nice rose cuttings/new rootstock with our plum, pear, apricot and apple seedlings.

You mentioned that your three children, Farnoosh, Farhad and Firouzeh, have never one single day lived at 163 Avenida Miraflores since you moved in 1979-80 and also that they previously relinquished to you whatever fractional ownership interests they may have had in the past, so we are advising you alone that we plan to plant a small, 5 gallon, Italian Stone pine tree at the extreme West end of our property; and that the tree will not grow taller, from a horizontal point of view from your home's dining room or kitchen, than the permitted eight (8) foot height from above-ground root system vertically of the existing *myoporum laetum* (see 1983 landscape plan approved by Town of Tiburon and by yourselves); nor, per verbal discussions with you and the Town, the pre-existing oleandears and *melaleuca nesophila* (see our revised letter dated June 17, 1983 to our mutual friend, Patti O'Brien), which are allowed to reach at least the same heights as the *myoporum laetum*.

Thank you for your consideration in this matter, and we look forward to a continuing good relationship with both of you going forward.

Sincerely yours,

*[S] E.H. Clock & N.M. Clock*

EDWIN H. CLOCK & NANCY M. CLOCK

P.S. We will stand by your side in your continuing battle with the Petris, 165 Avenida Miraflores, regarding property/boundary rights between your two parcels and whom we understand are also in conflict with the Kaplan family at 167 Avenida Miraflores, Tiburon.

EXHIBIT NO. 11

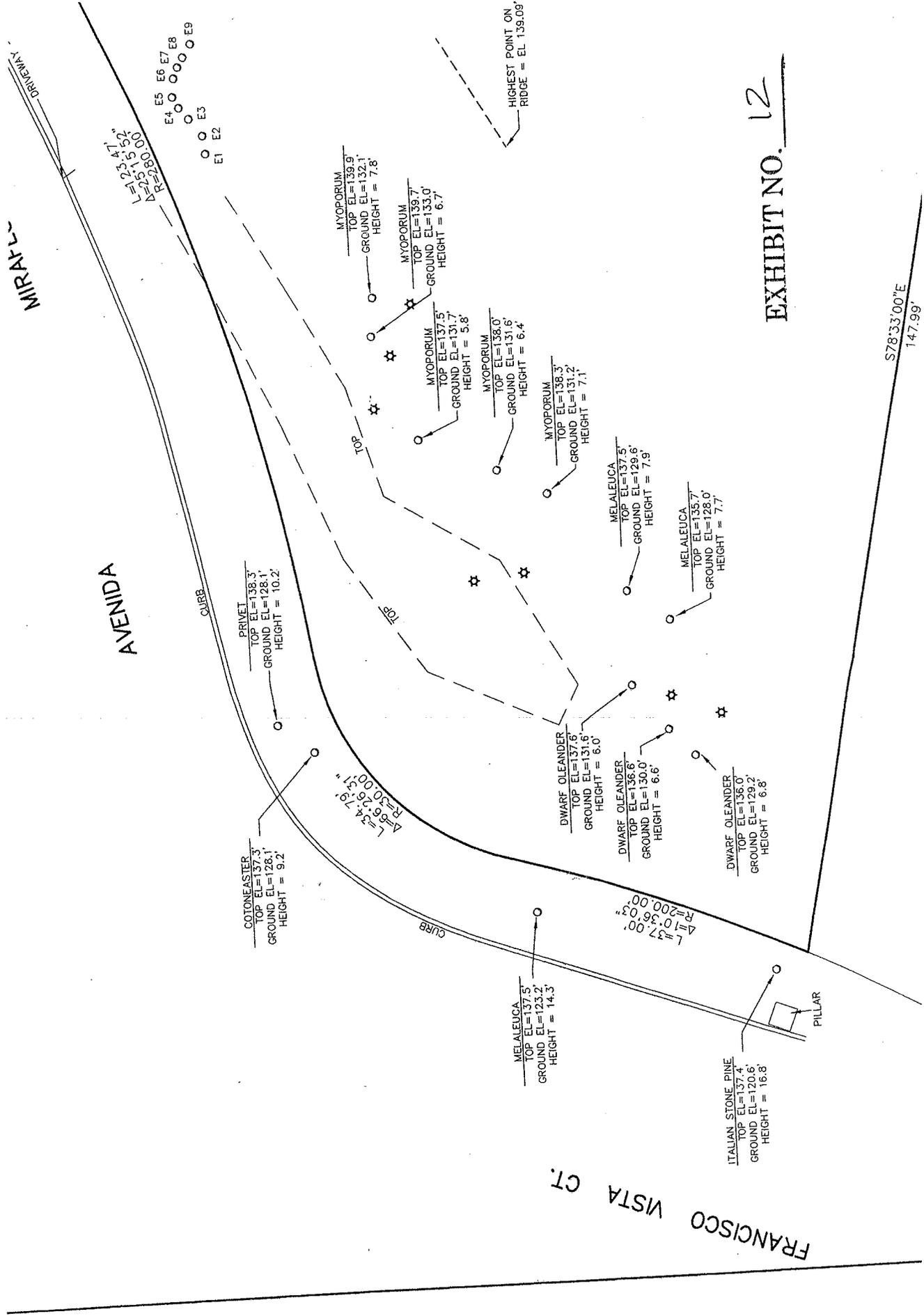
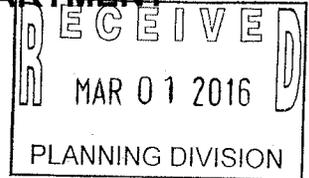


EXHIBIT NO. 12

**MEMORANDUM TO TOWN OF TIBURON PLANNING DEPARTMENT**



To: Dan Watrous, Planning Manager, Town of Tiburon  
Re: Application of F. Hariri re Landscaping Located on APN 039-111-09  
From: Edwin H. Clock and Nancy M. Clock, Owners of APN 039-111-09  
Date: March 1, 2016

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On February 24, 2016 we received your "Courtesy Notice of Tree Permit Application" (Application), and by this Memorandum we wish herewith to express our several reasons supporting **our strong opposition to the Application.**

**The Maleleuca Quinquenervia (aka Cajeputs):** There are actually three (3) separate maleleuca planted in 1977-78, when our property was originally developed, adjacent to the intersection of Francisco Vista Court and Avenida Miraflores. All landscaping planted in the late 1970s consisted of drought-resistant flora owing to the severe drought experienced in Marin County during those years. Sunset Western Garden Book (2012 edition, page 439) confirms that this species of maleleuca requires only "little to regular water" and is also a "good street tree".

We have maintained the three maleleuca for the 37 years that we have lived and owned the property at 150 Avenida Miraflores, employing Marin Tree Service on a regular (quarterly) basis to prune and keep the maleleuca disease-free. During a site visit/site inspection on January 15, 2016, Deputy Public Works Director Joel Brewer confirmed his satisfaction with the manner in which all landscaping, including the maleleuca, were being maintained by us within the Town's right of way.

Furthermore, two (2) of the three (3) maleleuca fall outside the definition of a "tree" within the scope of Tiburon Municipal Code, Chapter 15A-2, page 4 because (i) the maximum height of all three (3) trees does not reach fifteen (15) feet (see Tree Survey prepared by Licensed Land Surveyor and Civil Engineer Lawrence Doyle dated 1/7/16 & 1/28/16); and (ii) the trunk

EXHIBIT NO. 13

P. LOKS

circumference at 24 inches above ground is less than 20 inches (11 and 18.5 inches, respectively) for two of the three maleleuca.

We also submit that the maleleuca further several of the announced “purposes and policies” of Tiburon’s Tree Ordinance, page 2, as follows: The maleleuca produce a very attractive, multi-colored pale green, light purple and yellowish white series of flowers at various times of the year (Sunset Western Garden Book, op. cit, page 439). They also create shade and privacy benefits from the large amount of vehicular traffic that passes by the West end of our property on a daily and nightly basis. The maleleuca have grown to heights of less than 15 feet in the nearly 40 years that they have been in the ground, with only minimal vertical pruning required during that time.

Lastly, we appreciate the Town’s policy recognizing “that residents in single-family...zones should have the freedom to determine the nature of their private landscaped surroundings.” (Tree Ordinance, chap. 15A-1(e), page 2).

**Italian Stone Pine Tree:** This tree, planted in the mid-1990s, with only one or two vertical prunings in the last decade, barely qualifies as a “tree” within the definition of the Tree Ordinance: it stands only 16.8 feet in height with a trunk circumference less than 32 inches.

Prior to planting the Italian stone pine, we informed and reviewed the planting with the then-residents and owners of 163 Avenida Miraflores, Mr. and Mrs. Hariri (see letter dated March 1, 1994). Until the filing of a lawsuit by one of the Hariri’s daughters in June 2014 – more than 20 years later -- we had never heard a single critical word or comment about our Italian stone pine from any person living in or owning any property in our neighborhood, including any of the Hariri family members.

This tree does not fall within the definition of an “undesirable tree” (Tree Ordinance, page 4) because it is not one of the named species and grows at only a “moderate” rate, meaning less than three feet per year (see Sunset Western Garden Book, op. cit., page 510). To the contrary, the Italian stone pine provides protection against erosion and is planted very

nearby the location where a severe landslide occurred during the winter of 1982. Civil and Soils Engineer Jay Nelson and Geotechnical Engineer Craig Herzog have consistently recommended that we plant and maintain medium-sized trees along the South- and West-facing slopes of our property in order to minimize the dangers of erosion and landslides.

These Engineers' recommendations, which we have followed with the planting of several oak trees (defined as "protected trees" by the Tree Ordinance, page 3), liquid amber, fruit trees, and the Italian stone pine were part of our desire to support the Town's policy goals favoring "trees that can provide soil stability, noise buffering, and wind protection benefits, and... prevent erosion and debris flow landslides on the hilly terrain which characterizes most of Tiburon." (Tree Ordinance, page 2).

On the subject of wind protection benefits, the Italian stone pine trees lies due West of our home and decking, which means that its branches and needles absorb wind coming in from the prevailing direction of Richardson Bay and the Golden Gate Bridge. In 2002 and 2004, winds measuring 82 and 75 miles per hour, respectively, inflicted great damage to our property by causing long sections of our newly-installed redwood fence to break apart and the breakage of some of our half inch glass railing as a result of a neighbor's entire roof (5 Francisco Vista Court) being lifted away and flying onto and over our property all the way up to Avenida Miraflores.

The Italian stone pine produces edible pine nuts (Sunset Western Garden Book, op. cit., page 510) that are eaten by a variety of birds; it is drought-resistant (Sunset Western Garden Book, page 510); and it produces a quantity of sap in the summer and fall that attract pollinators, which the Audubon Society has declared to be an "endangered species" throughout much of California.

### **Reasons to Retain (not cut down) Both Melaleuca or Italian Stone Pine**

First, petitioner Hariri, through attorney Bonapart, makes much of the absence of permits to plant our trees/landscaping in 1977-78 and 1994. However, the only relevant and applicable ordinance (Tiburon Municipal Code, Chap. 15-A-3(c)) for the very first time became effective following its enactment by the Town of Tiburon in March 2001. Hence, the 1970s and

EXHIBIT NO. 13  
P. 3 of 5

1990s plantings of the two landscaping flora at issue pre-dated any permit requirement.

Second, petitioner's principal, and really sole, argument against the maleleuca and Italian stone pine rests upon photographs taken by arborist MacNair in 2013 and 2014, none of which photographs represent the true status of any of the landscaping at issue at present. Rather, testimony and photographic presentation at trial in Marin County Superior Court Case No. 1402371 on January 27-29, 2016 by Consulting Arborist Ray Moritz of Urban Land Associates of San Rafael completely refuted all of petitioner's claims regarding the health, well-being and size or existence of the maleleuca and Italian stone pine tree (see Motion in Limine filed 1/27/16, and granted by Judge Chernus in large part).

In addition, Arborist Robert Morey of Marin Tree Service has repeatedly confirmed since 2004 that both the maleleuca and Italian stone pine are in excellent health and that they are being well maintained by Marin Tree Service and by us. Indeed, Deputy Public Works Director Joel Brewer, as previously indicated, confirmed the same to us on January 15, 2016 during his visit/site inspection of our property.

Third, former Town of Tiburon Attorney Gary Ragghianti has repeatedly explained over the last 25 years that Tiburon Municipal Code, Title IV categorically exempts all landscaping planted on Town rights of way (Section 15-16) from all provisions of the "View and Sunlight Obstruction from Trees" Ordinance; hence, all claims and complaints being made by petitioner Hariri regarding alleged view obstruction are contrary to the View Ordinance's specific exemptions and may not properly be considered by the Town of Tiburon in this matter.

Fourth, neither the maleleuca nor the Italian stone pine are visible from any room inside the residence of any home or property in the entire neighborhood, with the exception only of 163 Avenida Miraflores. Hence, what public purpose is served by chopping down perfectly healthy and attractive landscaping for the single – but dubious and questionable – benefit of one individual?

Finally, In both 1983 and 2004, landscaping plans and landscaping already in place at our property were inspected and approved by both Town planning and building officials (see 6/17/83 memorandum and 3/2004 and 4/2004 documents).

For all of the above reasons, we respectfully submit that retaining – not chopping down – the maleleuca and Italian stone pine are in the best interests of the Town and we, the property owners who have maintained these flora for several decades and will continue to do so in good faith and with the assistance of professional arborists.

Attachments

EXHIBIT NO. 13

P. 5075

## Dan Watrous

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**From:** Sam Arino [sam\_arino@sbcglobal.net]  
**Sent:** Friday, March 04, 2016 3:43 PM  
**To:** Firuze Hariri  
**Cc:** Dan Watrous  
**Subject:** Tiburon Tree Permit Application - 02/22/2016

Firuze,

We trust that you will soon be in receipt of your applied for permit from the Town of Tiburon to remove two trees originally planted without the required permit on Town of Tiburon property adjacent to the property located at 150 Avenida Miraflores. And when you do have those trees removed and start to get back your incredible views too long blocked by an intransigent neighbor and a complicit Town of Tiburon, we would greatly appreciate it if you would also have removed the small Monterrey Pine growing on your property uphill from your driveway and next to the wrought iron fence running parallel thereto. That tree according to the Town of Tiburon Municipal Code has both been designated as an "undesirable tree" because of its "potential for creating view blockage due to rapid growth and tall height at maturity", and the "Planting of any "undesirable tree" on any property is prohibited without the prior issuance of a permit."

Sincerely,  
Chester Judah, Jr.

EXHIBIT NO. 14



1 Decision on April 18, 2016. A hearing was held on June 8, 2016 and additional briefing was  
2 submitted by the parties. The Court issued its final Statement of Decision on July 18, 2016.

3 Evidence, both oral and documentary, having been presented by all parties, a site  
4 inspection conducted, the cause having been argued and submitted,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that some of the plants  
6 which Defendants planted on their property and on adjacent Town of Tiburon property  
7 constitute an unreasonable obstruction of Plaintiff's views. In particular, a portion of the Eugenia  
8 hedge planted near Defendants' home and the Italian Stone Pine that Defendants planted on  
9 adjacent Town property unreasonably obstruct the Plaintiff's views in violation of Town of  
10 Tiburon Ordinance § 15. Said violation constitutes a public nuisance.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants have  
12 planted trees on Town of Tiburon property without a required permit in violation of Town of  
13 Tiburon Ordinance § 15A including an Italian Stone Pine, flowering gum, Melaleuca shrub,  
14 Cottleaster, and a Privet. Said violation constitutes a public nuisance.

15 The Plaintiff is entitled to a declaration that the public nuisances noted above must be  
16 abated by the Defendants. The Defendants must continue in the future to maintain their property  
17 so that their landscaping does not unreasonably obstruct their neighbors' views and/or plant on  
18 the land belonging to the Town of Tiburon without a permit.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' trees and  
20 vegetation in their present condition violate the parties' contract identified as "Withdrawal of  
21 Appeal and Modification of Board's Decision Approving Building Permit and Variances – File  
22 Number 28216" dated March 16, 1983. That contract provided in part that "... [Defendants] will  
23 not install or maintain any additional landscaping which would further impair any marine views  
24 form (sic) the real property located at 163 and 165 Avenida Miraflores, Tiburon, California."  
25 Accordingly, any planting or landscaping whatsoever that is higher than the berm on Defendants'  
26 property does, in fact, constitute a further impairment of Plaintiff's marine views and is in  
27 violation of the contract between the parties.

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INJUNCTIVE RELIEF

The Court hereby issues a permanent mandatory injunction as follows:

1. With respect to plants on the Town of Tiburon Property and subject to the Town granting any necessary removal and/or encroachment permits, within 30 days from the date of this Judgment, the Defendants shall remove all of the plantings on the property of the Town of Tiburon including the Italian Stone Pine, a flowering gum, one Melaleuca shrub, the Cottoneaster and the Privet as shown on Exhibit A attached hereto. There will be no basis for Defendants to object to or interfere with the Town issuing any permits necessary for the performance of the work. To the extent that permits have already been issued to Plaintiff for the removal work, Plaintiff may proceed with performing that work at her option;

2. With respect to trees and vegetation on Defendants' property, Defendants are ordered within thirty (30) days from the date of entry of judgment to:

- a. Remove portion of Eugenia hedge blocking the view of the City of San Francisco skyline (## E1, E2, E3, and E4 on Defendants' Exhibit I, also noted as Plant ## 7-1, 7-2, 7-3, and 7-4 on Exhibit A)
- b. Maintain, either by trimming or removal, all other landscaping so that it does not exceed the elevation of the berm. This is an ongoing obligation.

Plaintiff is determined to be the prevailing party and is entitled to her costs of suit pursuant to §§ 15A-10 and 15-13 of the Tiburon Municipal Code.

The Court will retain continuing jurisdiction over the matter to ensure that the abatement process is accomplished and that no future violations of the Judgment occur. The Court also reserves jurisdiction to amend the Judgment to add costs of suit once that amount is determined.

IT IS SO ORDERED.

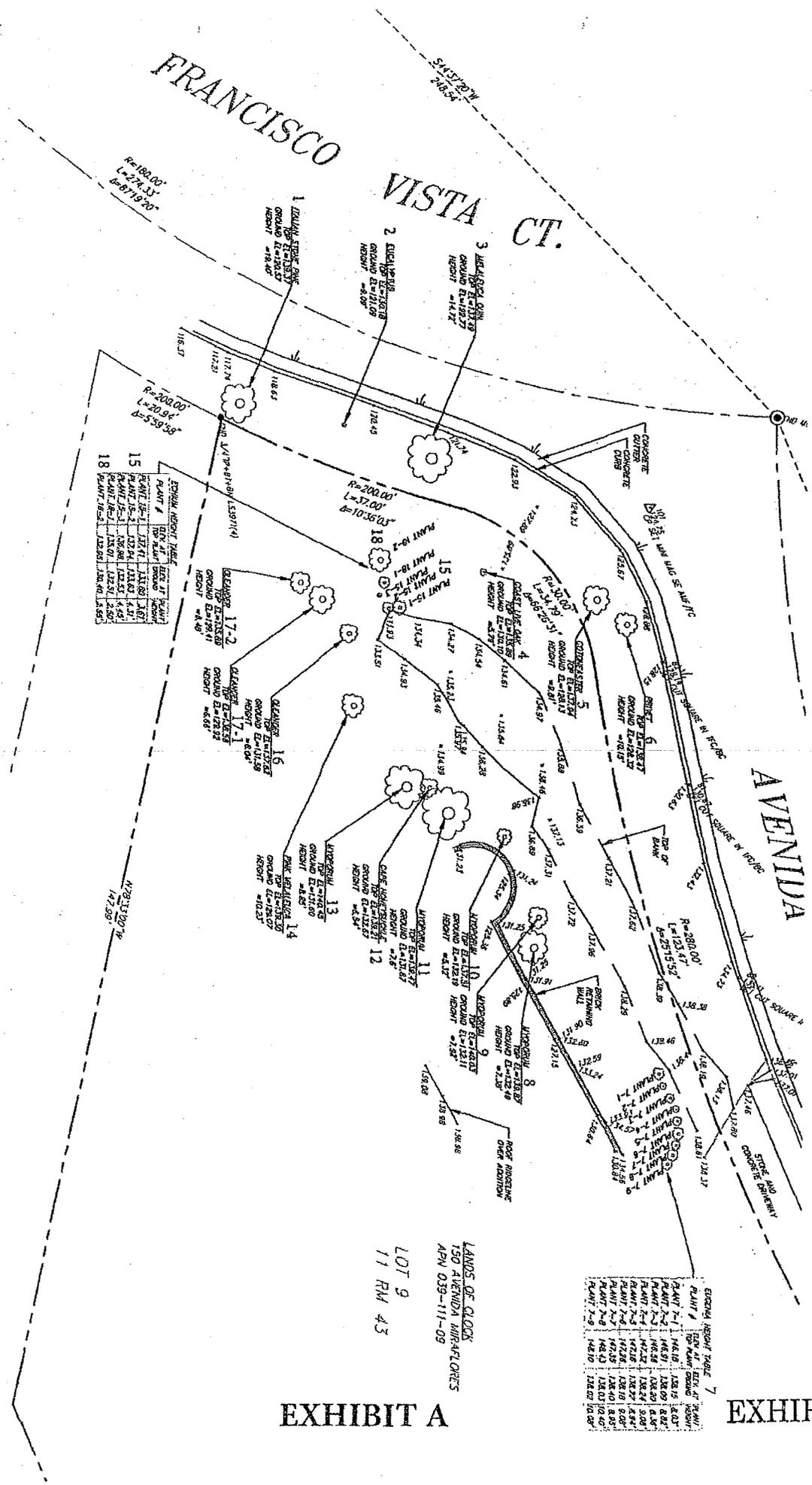
Dated: SEP 01 2016

**ROY CHERNUS**  
\_\_\_\_\_  
ROY B. CHERNUS  
JUDGE OF THE SUPERIOR COURT

# Exhibit "A"

EXHIBIT NO. 15  
P. 4 OF 5

# FRANCISCO VISTA CT.



R=180.00'  
L=274.33'  
D=57°19'20"

R=200.00'  
L=20.94'  
D=5°59'58"

R=200.00'  
L=32.00'  
D=10°36'03"

GENERAL REPORT TABLE

PLANT #	TOP OF GROUND	GROUND ELEVATION	HEIGHT
PLANT 1	117.71	117.71	1.81
PLANT 2	117.71	117.71	1.81
PLANT 3	117.71	117.71	1.81
PLANT 4	117.71	117.71	1.81
PLANT 5	117.71	117.71	1.81
PLANT 6	117.71	117.71	1.81
PLANT 7	117.71	117.71	1.81
PLANT 8	117.71	117.71	1.81
PLANT 9	117.71	117.71	1.81
PLANT 10	117.71	117.71	1.81
PLANT 11	117.71	117.71	1.81
PLANT 12	117.71	117.71	1.81
PLANT 13	117.71	117.71	1.81
PLANT 14	117.71	117.71	1.81
PLANT 15	117.71	117.71	1.81
PLANT 16	117.71	117.71	1.81
PLANT 17	117.71	117.71	1.81
PLANT 18	117.71	117.71	1.81

GENERAL REPORT TABLE 7

PLANT #	TOP OF GROUND	GROUND ELEVATION	HEIGHT
PLANT 7-1	148.10	148.10	8.83
PLANT 7-2	148.10	148.10	8.83
PLANT 7-3	148.10	148.10	8.83
PLANT 7-4	148.10	148.10	8.83
PLANT 7-5	148.10	148.10	8.83
PLANT 7-6	148.10	148.10	8.83
PLANT 7-7	148.10	148.10	8.83
PLANT 7-8	148.10	148.10	8.83
PLANT 7-9	148.10	148.10	8.83

LANDS OF CLOCK  
150 AVENIDA MIRAFLORES  
APN 039-11-09  
LOT 9  
11 RM 43

EXHIBIT A

EXHIBIT NO. 15

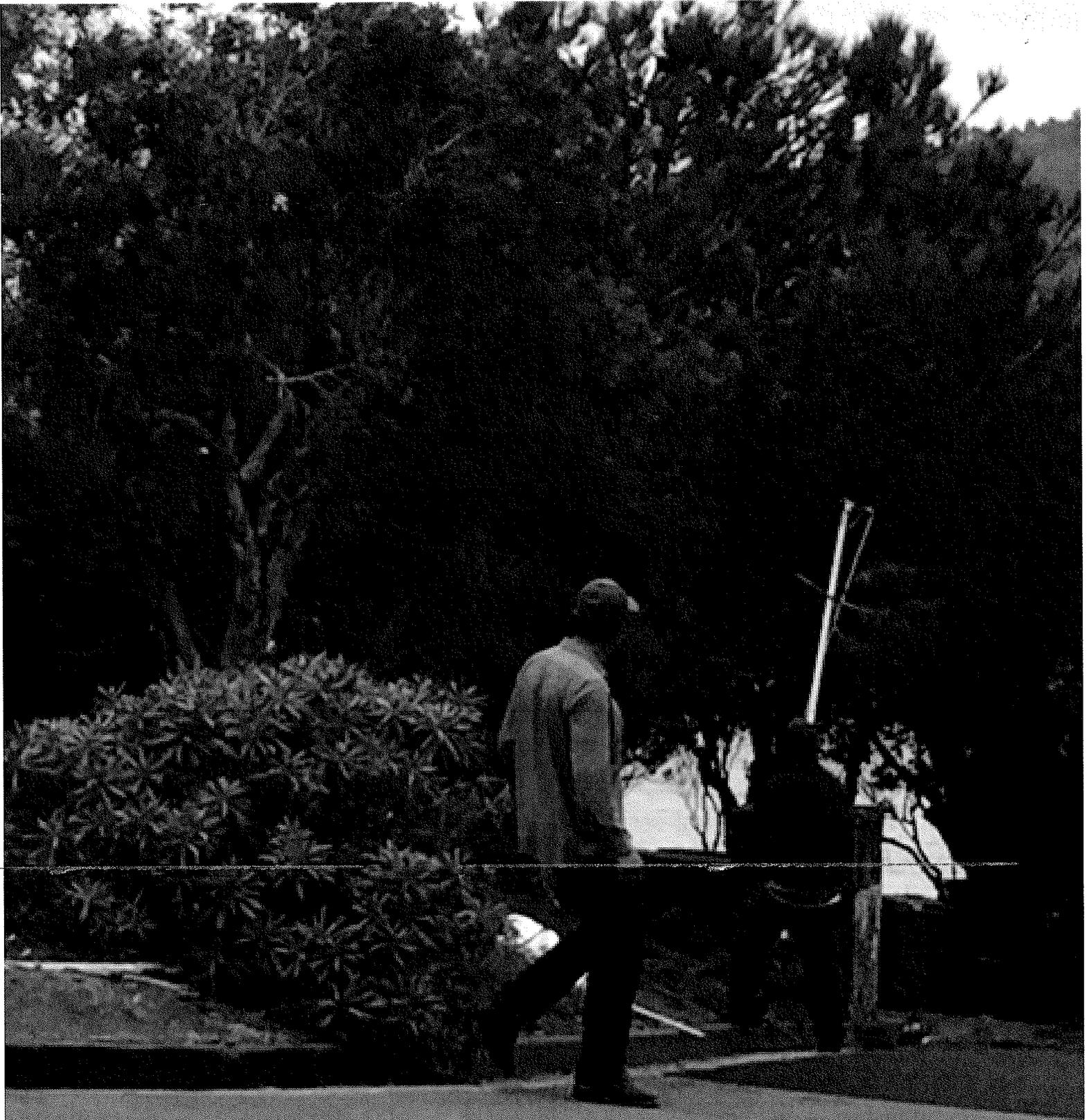


EXHIBIT NO. 16

P. 1074

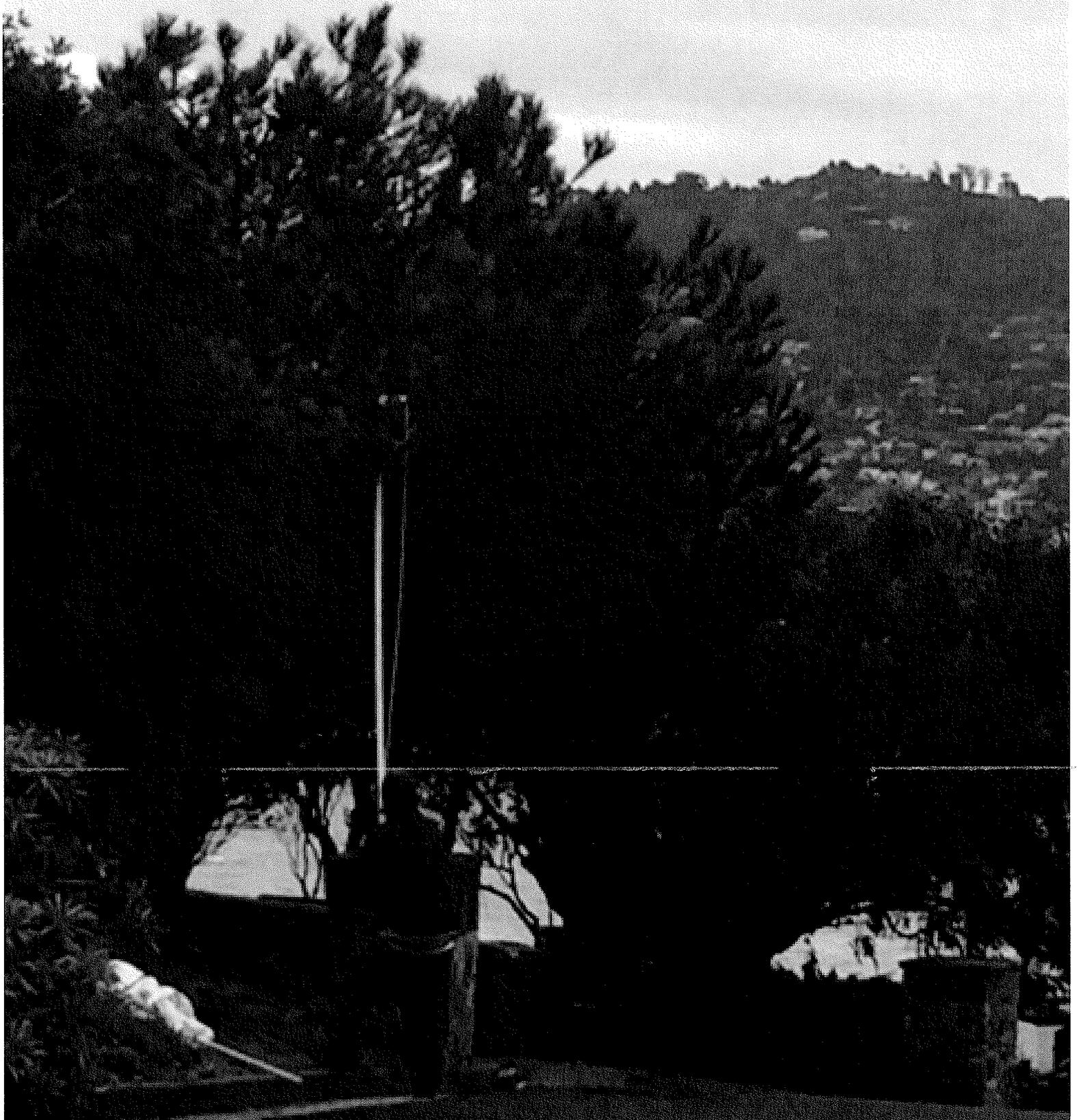


EXHIBIT NO. 16  
P. 2074

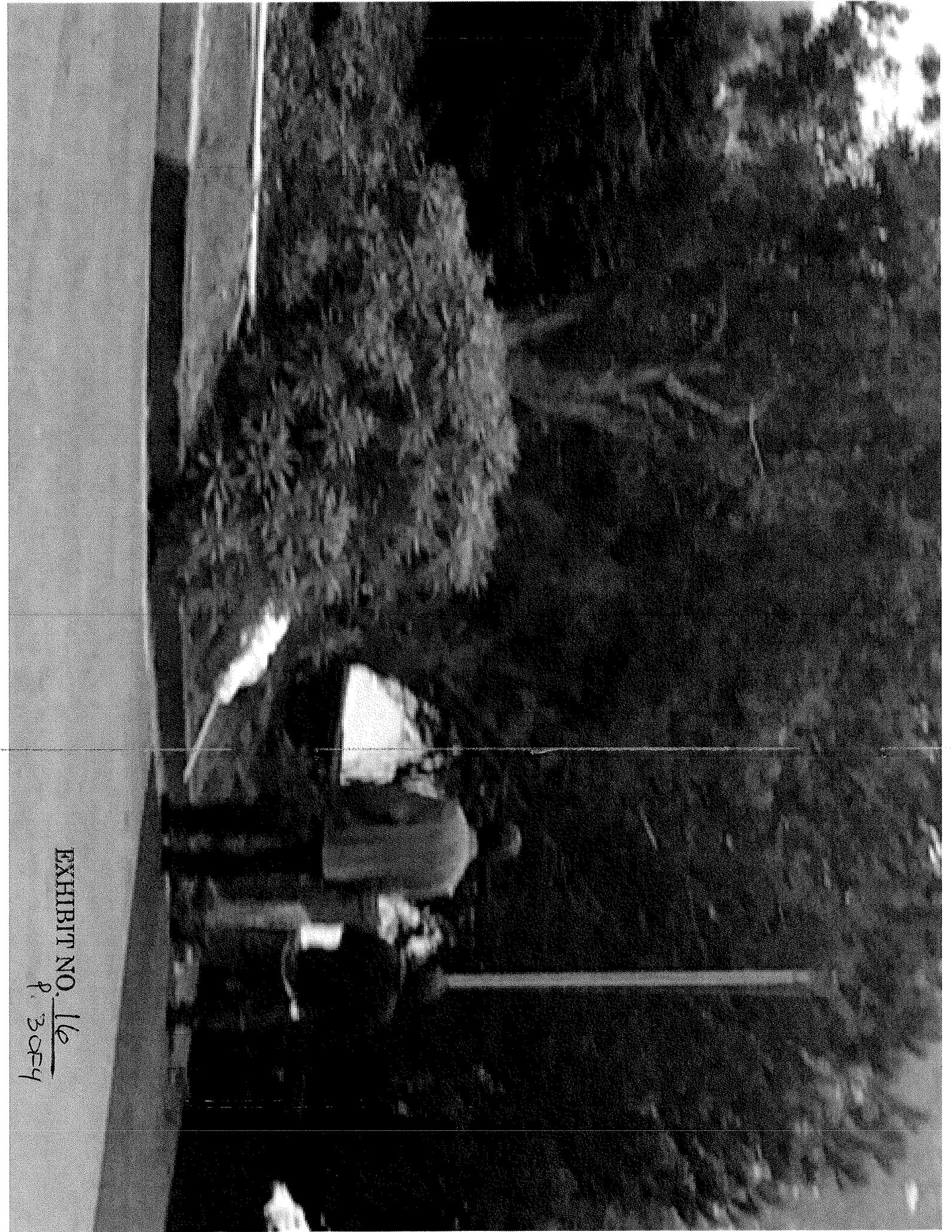


EXHIBIT NO. 16  
P. 3024

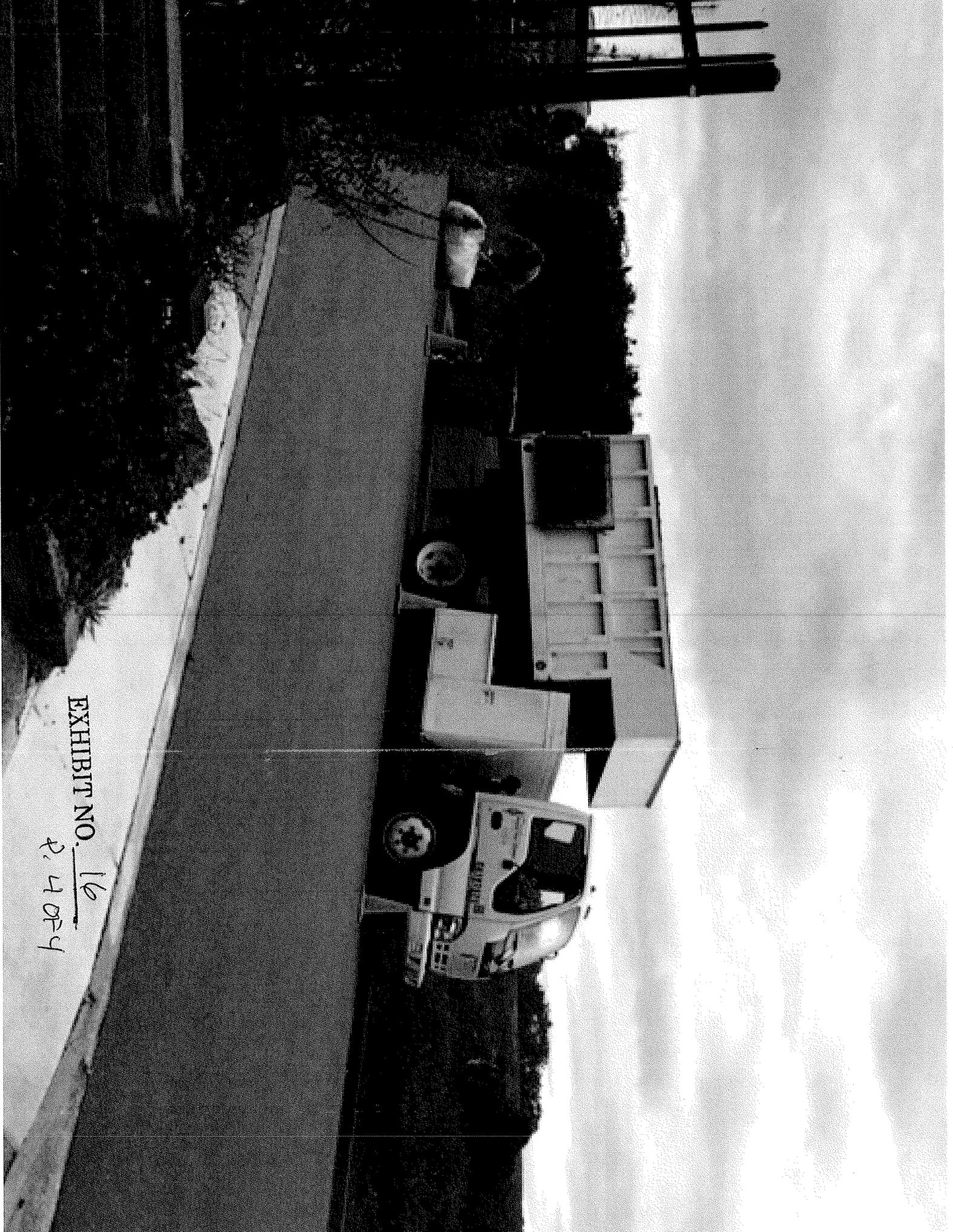


EXHIBIT NO. 16  
P. 4024